



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/166111

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed May 20, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Family Care, a hearing was held on January 12, 2016, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely and if so, whether the Milwaukee Enrollment Services (the agency) correctly determined the Petitioner's Cost Share.

Note: This hearing was originally scheduled for hearing on June 17, 2015. At the request of Petitioner's representative, the hearing was rescheduled to August 13, 2015, to give the Petitioner's representative an opportunity to submit medical bills and to give the parties an opportunity to resolve the matter.

On August 13, 2015, the Petitioner's representative was informed that some of the bills she submitted, were actually bills for the patient liability. At the request of the Petitioner's representative, the hearing was then rescheduled to September 2, 2015, because Petitioner's representative wanted more time to work on getting her mother's medical bills together.

The September 2, 2015 hearing date was rescheduled at the request of Petitioner's representative because she wanted time to get a lawyer and more time to prepare for the hearing. The matter was then set for October 20, 2015.

The hearing was rescheduled, at the request of Petitioner's representative, to give Petitioner's representative more time to obtain and submit medical bills. The hearing was then set for December 1, 2015.

At Petitioner's request the hearing was rescheduled to January 12, 2016, because she submitted 10 e-mails with attached bills to the Division of Hearings and Appeals, but not to the agency. As such, time was needed to get the bills to the agency for review.

As indicated above, the hearing took place as scheduled on January 12, 2016.

The record was held open for one day to get copies of the notices of decision that were sent to the Petitioner and documentation of Petitioner's income. The agency submitted the following notices that were not previously provided:

Exhibit 27 – February 9, 2015  
Exhibit 28- February 29, 2015

- Exhibit 29 – June 24, 2015
- Exhibit 30 – August 19, 2015
- Exhibit 31 – January 11, 2016
- Exhibit 32 – February 16, 2015
- Exhibit 33 – March 30, 2015
- Exhibit 34 – November 30, 2015

The agency also provided Exhibit 35, a Social Security Benefit Detail Printout and Exhibit 36, an earned income summary, showing Petitioner’s pension income.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████████  
 ██████████  
 ██████████

Respondent:

Department of Health Services  
 1 West Wilson Street, Room 651  
 Madison, Wisconsin 53703  
 By: Julie Salmeron, IMSA  
 Milwaukee Enrollment Services  
 1220 W Vliet St, Room 106  
 Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
 Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ██████████) is a resident of Milwaukee County.
2. On October 10, 2014, Milwaukee Enrollment Services (the agency) sent the Petitioner a notice, advising her that as of September 1, 2014, she would be enrolled in Family Care with a cost share of \$607.11 per month. (Exhibit 6a)
3. On February 9, 2015, the agency sent the Petitioner/Petitioner’s representative at ██████████, a notice indicating that as of March 1, 2015, she would be enrolled in Family Care with a cost share of \$612.11. (Exhibit 27)
4. On February 13, 2015, the agency sent the Petitioner/Petitioner’s representative at ██████████, a notice, advising the Petitioner that beginning February 1, 2015, she was enrolled in Nursing Home Long-Term Care Medicaid and that she would have a patient liability of \$1,130.11 per month. (Exhibit 6b)
5. On February 16, 2015, the agency sent the Petitioner/Petitioner’s representative at ██████████, a notice indicating that she would not have “no monthly premium” as of February 1, 2015. (Exhibit 32)
6. On February 19, 2015, the agency sent the Petitioner a notice, advising her that as of April 1, 2015, she would have a patient liability of \$283.82 per month. (Exhibit 28)

7. On March 30, 2015, the agency sent the Petitioner a notice, advising her that as of May 1, 2015, she would have a patient liability of \$1,235.11 per month. (Exhibit 33)
8. The Petitioner’s daughter, on behalf of Petitioner, filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 20, 2015. (Exhibit 1)
9. On June 24, 2015, the agency sent the Petitioner a notice, advising her that she would have a patient liability of \$1,235.11 for the month of July 2015. (Exhibit 29)
10. On August 19, 2015, the agency sent the Petitioner a notice, advising her that she would have a patient liability of \$1,235. 11 as of September 1, 2015. (Exhibit 30)
11. On November 30, 2014, the agency sent the Petitioner/Petitioner’s representative at [REDACTED] a notice, advising her that as of January 1, 2016, her patient liability would be \$1,130.11 per month. (Exhibit 34)
12. January 7, 2016, the agency sent the Petitioner a notice, advising her that as of January 1, 2016, she was enrolled in Nursing Home Long-Term Care Medicaid and that she would not have a patient liability. (Exhibits 24 and 26)
13. On January 8, 2016, the agency sent the Petitioner a notice, advising her that she was enrolled in Nursing Home Long Term Care Medicaid and that she had a patient liability of \$367.42 for October 2015, but not patient liability for the months of November 2015 and December 2015. (Exhibits 25 and 26)
14. On January 11, 2016, the agency sent the Petitioner/Petitioner’s representative at [REDACTED] a notice that she needs to complete a renewal by February 29, 2016, if she wants to continue receiving Medicaid benefits. (Exhibit 31)
15. Petitioner receives income from a pension and from Social Security. She receives \$1042.90 per month in Social Security Retirement Income, but has \$104.90 deducted for Medicare Part B premiums. Petitioner also receives pension income from two sources, in the amounts of \$483.35 per month from one, and \$353.76 from the other. Thus, her total gross income works out to be:

\$1042.90
+\$483.35
+353.76
<hr style="width: 200px; margin-left: 0;"/>
\$1880.01

(Exhibits 35 and 36)

**DISCUSSION**

*TIMELINESS OF PETITIONER’S APPEAL*

Petitioner’s daughter wanted to appeal the agency’s determination of Petitioner’s cost share/patient liability going back to September 2014. However, there is no jurisdiction to review matters going back that far.

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application, the termination of an ongoing case, or as in this matter, the imposition / increase in a cost share/patient liability.

The date of action is the effective date of the agency action, or the date agency issued notice of its intended action, whichever is later.

The first date of action is October 10, 2014, the date agency advised the Petitioner that she would have a cost share effective September 1<sup>st</sup>, 2014. Petitioner did not file her appeal until May 20, 2015, one year, and five months past the appeal deadline of November 25, 2014.

The second date of action, was February 13, 2015, the date the agency advised the Petitioner that she would have a patient liability, effective February 1, 2015. Petitioner filed her appeal 50 days after the March 31, 2015 appeal deadline.

Thus, Petitioner's appeal is untimely with regard to those determinations, and no jurisdiction exists for considering the merits of those issues. I note however, that on February 16, 2015, the agency determined that the Petitioner had no monthly cost for her nursing home long term care benefits as of February 1, 2015. So, Petitioner's appeal of the cost share/patient liability for that month is moot.

The February notice and Ms. Salmeron's testimony establishes that there was no cost share for March 2015, either, so Petitioner's appeal of her cost share for that month is also moot. Her appeal of the March cost share is untimely anyway, because it needed to be filed by April 14, 2015 and Petitioner did not file an appeal until May 2015.

Petitioner's appeal of the April 2015 cost share needed to be filed by May 15, 2015, since the date of action for that matter was April 1, 2015. Petitioner's appeal was five days late. As such, there is no jurisdiction to review the accuracy of that determination.

The agency then determined that Petitioner's patient liability for May 2015 through September 2015 was \$1235.11. Petitioner's appeal of that determination is timely.

Petitioner's daughter/representative argued that it is not fair to hold her to the 45 day appeal period because the Petitioner didn't give her the notices right away. However, there is nothing in the record establishing that the Petitioner has been deemed incompetent. Further, this issue is equitable in nature, i.e. it is based on what fairness might be thought to require. An ALJ does not possess any equitable powers but must apply the law as it is written. (See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] (Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987)(DHSS).

#### *PETITIONER'S PATIENT LIABILITY FOR MAY 2015 THROUGH SEPTEMBER 2015*

The Medicaid Eligibility Handbook (*MEH*) explains how a person's patient liability is determined in §27.7.1 ILTC :

After an institutionalized person has been determined eligible for Medicaid, his/her cost of care must be calculated. Cost of care is the amount s/he will pay each month to partially offset the cost of his/her Medicaid services. It is called the patient liability amount when applied to a resident of a medical institution and cost share when applied to a community waivers client, Pace/ Partnership, or Family Care client. The institutionalized member will be expected to pay their patient liability to the institution that they are residing in as of the first day of the month.....

For a Medicaid member in a medical institution who does not have a spouse living in the community, the cost of care is calculated by deducting the following items from the person's monthly income:

1. \$65 and ½ earned income [disregard \(15.7.5 \\$65 and ½ Earned Income Deduction\)](#).
2. Monthly cost for health insurance ([27.6.4 Health Insurance](#)).
3. Support payments, meaning payments made to another person for the purpose of supporting that person. ([15.7.2.1 Support Payments](#)).
4. Personal needs allowance ([39.4 EBD Assets and Income Tables](#)).
5. Home maintenance costs, meaning the cost of maintaining a home, to which the individual intends to return to and is likely to return. This deduction is allowable for up to six months. ([15.7.1 Maintaining Home or Apartment](#)).
6. Expenses for establishing and maintaining a court-ordered guardianship or protective placement, including court-ordered attorney and/or guardian fees ([27.6.6 Fees to Guardians or Attorneys](#)).
7. Medical Remedial Expenses. See [27.7.8 Payment for Non-Covered Services](#).

*MEH §27.7.1 ILTC*

Applying the foregoing to Petitioner's case:

- 1) She does not have earned income, so the earned income disregard does not apply;
- 2) Petitioner paid \$104.90 per month for Medicare Part B premiums. (See Exhibit 35) The notices dated March 30, 2015 and June 24, 2015, as well as the SSA Benefits and Details print out, indicate that as of May 2015, the Petitioner was over income for the Medicare Premium Assistance Program. As such, her Medicare Part B premium was no longer being paid by the State of Wisconsin. According to Exhibit 24, a notice dated January 2016, the Petitioner did not again become eligible for the Medicare Premium Assistance Program until February 1, 2016. Thus, the expense should have been allowed for the period of May to September 2015.
- 3) There is no claim, nor any indication that Petitioner is obligated to make payments for the care and maintenance of another person;
- 4) It is undisputed that Petitioner is entitled to the personal needs allowance of \$45.00 dictated by *MEH §39.4.2*;
- 5) It is undisputed Petitioner was entitled to a deduction, for the five month period of May through September, for the rent on the apartment to which she intended to return, which was \$600 per month;
- 6) Petitioner has not claimed, nor is there evidence that Petitioner incurs any expenses to maintain a court-ordered guardianship or protective placement and
- 7) During the period of May 2015 to September 2015, the Petitioner did not report any medical/remedial expenses.

Looking at the Institution Medicaid Budget Printout in Exhibit 5, it appears that MILES did not allow a deduction for Petitioner's Medicare Part B premium as a Medical/Remedial Expenses.

Applying Petitioner's correct income and a deduction for her Medicare Part B premium, we have:

\$1880.01 total monthly income  
 (\$104.90) Health Insurance Paid - Medicare Part B Premium  
 (\$45.00) Less personal need allowance

(\$600.00) Home Maintenance

-----  
 \$1130.11 Patient Liability.

*OCTOBER 2015*

Ms. Salmerone indicated that the agency reviewed all of the medical bills submitted in the nine e-mails contained in Exhibits 12-22 and added them together to get a total of \$5388.13 in out of pocket medical bills. There is nothing in the record that causes me to question the agency's tabulation of Petitioner's medical expenses in Exhibits 12-22.

The agency then divided the \$5388.13 by the correct cost share of \$1130.11, to see how many months the medical expenses would cover. They determined Petitioner's medical expenses would cover four full months at \$1130.11, and one partial month at \$867.69.

Ms. Salermone, indicated that the agency applied the partial month to October 2015 to give the Petitioner the greatest patient liability reduction, since that was the sixth and last month the Petitioner could claim the home maintenance deduction.

However, the agency still forgot to allow Petitioner's Medicare Part B premium as a medical expense.

Allowing for the Medicare Part B premium, we have the following cost share/patient liability calculation:

\$1880.01 total monthly income  
 (\$104.90) Health Insurance Paid - Medicare Part B premium  
 (\$45.00) Less personal need allowance  
 (\$867.69) Medical Remedial Expenses from Exhibits 12-22, incorrectly referred to as  
 support paid  
 (\$600.00) Home Maintenance  
 -----  
 \$262.42 Cost share/Patient Liability

*NOVEMBER 2015 GOING FORWARD*

Petitioner's appeal for the period of November 2015 through February 2016 is moot because the agency has determined that Petitioner does not have a patient liability for that period and the error regarding the Medicare Part B premium would have no effect on that determination. Indeed, you can't get lower than zero for a patient liability / cost share amount.

*MARCH 2016 GOING FORWARD*

The agency has not yet issued a notice to Petitioner concerning her patient liability for March 2016. She needs to complete her renewal first. If Petitioner disagrees with the agency determination for that month, Petitioner will have to file a new appeal.

**CONCLUSIONS OF LAW**

There is no jurisdiction to review Petitioner's cost share / patient liability for the months of September 2014 through April 2015, because Petitioner's appeal was untimely for those months.

The agency incorrectly calculated the Petitioner's cost share for the months of May 2015 through October 2015.

Petitioner's appeal of the cost share for November 2015 through February 2016 is moot, because the agency has determined that Petitioner has no cost share for that period of time.

**THEREFORE, it is**

**ORDERED**

For the period of May 2015 through September 2015, the agency shall adjust Petitioner's cost share to be \$1130.11 and for October 2015, the agency shall reflect the Petitioner's cost share to be \$262.42. The agency shall take all administrative steps necessary to complete this task within ten days of this decision.

In all other respects the petition is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

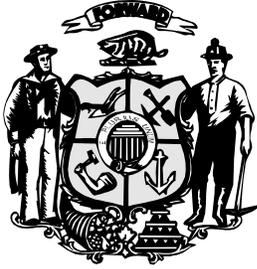
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 14th day of January, 2016

---

\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 14, 2016.

Milwaukee Enrollment Services  
Office of Family Care Expansion  
Health Care Access and Accountability