



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



**DECISION**  
Case #: FCP - 174901

**PRELIMINARY RECITALS**

Pursuant to a petition filed on June 8, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on August 17, 2016, by telephone.

The issue for determination is whether the agency erred in its determination of the cost share of \$271 to maintain FCP enrollment.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By:   
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. In 2013 petitioner enrolled in the Family Care Program ("FCP").

3. Petitioner was determined to be responsible for a monthly cost share to maintain enrollment in the FCP.
4. Petitioner never paid that cost share and the program never sought it from her for unexplained reasons.
5. On May 25, 2016 the program sent a notice informing petitioner that she is responsible for a cost share in the amount of \$271 to maintain enrollment in the FCP.
6. Petitioner's only income is her SS Disability payment of \$1,192 per month. The state pays petitioner's Medicare Part B premium. Petitioner's rent expense is \$358.
7. Petitioner appealed the May 25, 2016 notice informing her of her \$271 cost share.

### DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

Cost sharing is the monthly amount a waivers participant has to contribute toward the cost of his/her waiver services. *MEH*, § 28.5.1. Payment of the cost share is a condition of eligibility. *Id.* Petitioner was enrolled in the Family Care Program in 2013. She was determined at that time to have a cost share responsibility.

Wis. Stat., §46.286(2)(a), provides that an FCP recipient must pay a cost share based upon income and certain expenses. Wis. Adm. Code, §DHS 10.34(3)(b) provides that cost of care is determined by taking the person's income, then making several deductions. The first deduction is a personal needs allowance as provided under 42 C.F.R. §435.726(c). That personal needs allowance is \$913, as set out in the MA Handbook, App. 39.4.2. Another deduction is special housing expenses for costs above \$350 per month. MA Handbook, App. 28.8.3.1. A third deduction is for out-of-pocket medical/remedial expenses. Handbook, App. 15.7.3.

Petitioner's argument at hearing was simply that she recalls having been told by someone at some unspecified time that she was not liable for a cost share. She also notes that the program has never sought the cost share or took action to collect overdue cost share payments.

I am not sure why there has been no effort to collect a cost share in the past, or whether there was no such obligation. The respondent could not explain why the program never sought payment from petitioner until April 2016. I suspect that there was an obligation but the program somehow erred and let enrollment be maintained for three years without its payment; essentially, petitioner's cost share appears to have been overlooked by the program and the county agency. That is not persuasive, however, as to whether a cost share is properly determined to be due now as the May 25, 2016 notice informed petitioner.

Based on the calculations of the agency arriving at the \$271 cost share I can identify no errors. A cost share determination is part of the FCP. Petitioner did not dispute any of the income and expense items identified by the agency.

**I note that during the hearing on this matter the FCP explained some efforts presently to have petitioner pay any amounts it considers to be in arrears by supplemental monthly payments. While not the issue before me, I note that medical assistance overpayments are typically not able to be**

recouped by the state or an agency if the overpayment has been caused by agency error. I question the propriety of any action at this point to recover any past "arrearage" from petitioner and, if petitioner finds herself responsible for such "arrearage" according the Department or the FCP petitioner should request a hearing from the Division of Hearings and Appeals to review such obligation.

**CONCLUSIONS OF LAW**

The agency correctly determined that petitioner is liable for a \$271 cost share amount to maintain enrollment in the FCP.

**THEREFORE, it is**

**ORDERED**

That this appeal 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, **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 Madison,  
Wisconsin, this 23rd day of September, 2016

\s \_\_\_\_\_  
John P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals



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

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The preceding decision was sent to the following parties on September 23, 2016.

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