



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION
Case #: MGE - 174951

PRELIMINARY RECITALS

Pursuant to a petition filed on June 14, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services regarding Medical Assistance (MA), a hearing was held on August 11, 2016, by telephone.

The issue for determination is whether the respondent correctly determined petitioner's income.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name and address]

Respondent:

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

By: [Redacted]
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Trempealeau County, and is certified for MA.

2. The respondent identified petitioner's monthly income from a pension in the amount of \$2,200 and social security of \$1,462. As such petitioner's gross monthly income is \$3,662. In budgeting petitioner's income, the respondent deducted a personal needs allowance of \$45, a guardianship fee of \$150 and maintenance \$200. The respondent thus calculated a patient liability amount of \$3,267, effective July 1, 2016. The respondent informed petitioner of this with an About Your Benefits notice dated June 6, 2016.
3. Petitioner filed his appeal arguing that the respondent erred in not disregarding a federal tax withholding of \$154 per month.

### **DISCUSSION**

Medical Assistance (MA) is a state-federal program designed to pay for medical coverage for low income persons. After an institutionalized person has been determined eligible for Medicaid, his or her cost of care must be calculated. Cost of care is the amount he or she will pay each month to partially offset the cost of his or 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 or Partnership, or Family Care member. The institutionalized member will be expected to pay his or her patient liability to the institution that he or she is residing in as of the first day of the month. The Medicaid Eligibility Handbook explains how the patient liability amount is calculated:

Calculate the cost of care in the following way:

1. For a Medicaid member in a medical institution who does not have a community spouse, subtract the following from the person's monthly income:
  - a. \$65 and ½ earned income disregard (see Section 15.7.5 \$65 and ½ Earned Income Deduction).
  - b. Monthly cost for health insurance (see Section 27.6.4 Health Insurance).
  - c. Support payments (see Section 15.7.2.1 Support Payments).
  - d. Personal needs allowance (see Section 39.4 Elderly, Blind, or Disabled Assets and Income Tables).
  - e. Home maintenance costs, if applicable (see Section 15.7.1 Maintaining Home or Apartment).
  - f. Expenses for establishing and maintaining a court-ordered guardianship or protective placement, including court-ordered attorney and/or guardian fees (see Section 27.6.6 Fees to Guardians or Attorneys).
  - g. Medical or remedial expenses (see Section 27.7.7 Medical or Remedial Expenses and Payments for Noncovered Services).
2. For a Medicaid member in a medical institution who has a community spouse, follow the directions in Section 18.6 Spousal Impoverishment Income Allocation.
3. For a community waivers member with or without a community spouse, follow the directions in Section 28.5 Home and Community-Based Waivers Long-Term Care Cost Sharing.
4. There is no cost of care for SSI recipients.
5. For a Medicaid member who was or could have been certified through a deductible before entering the institution, there is no cost of care until the deductible period ends.

If the cost of care amount is equal to or more than the medical institution's Medicaid rate, the individual is responsible for the entire cost of his or her institutional care. He or she would be entitled to keep any overage without restriction. He or she would remain

eligible for the Medicaid program and have no further financial obligation to the Medicaid program for that month.

*Medicaid Eligibility Handbook* §27.7.1.

The petitioner argues that his repayment of back taxes to the IRS should be disregarded; i.e. subtracted from his gross monthly income for budgeting purposes when determining his patient liability. However, the Medicaid Eligibility Handbook instructs that:

General Rules:

1. Only count income when it is available.
2. Some income is disregarded (see Section 15.3 Exempt and Disregarded Income).
3. Always use gross income when calculating income.
4. Some income, even though it is unavailable income, must be counted (e.g., garnishments).

Income is available if all the following are true:

1. It is actually available.
2. The person has a legal interest in it.
3. The person has the legal ability to make it available for support and maintenance.

**Note:** Available income can include more than a person actually receives if amounts are withheld from earned or unearned income because of a garnishment or to pay a debt or any other legal obligation.

*Medicaid Eligibility Handbook* §15.1.5. In petitioner’s case the taxes are being withheld due to back taxes owed. Per the Note in the above-referenced Handbook section, it notes that “available income” can include monies directed to pay a debt or any other legal obligation. Furthermore, I have reviewed Medicaid Eligibility Handbook §15.3, and do not find any indication that the IRS debt payments would fall into any of the “disregard” categories. As such, I conclude that the respondent has correctly declined to disregard the IRS payments made by petitioner.

### **CONCLUSIONS OF LAW**

The Department correctly declined to disregard IRS payments made by petitioner to address his back taxes (debt).

**THEREFORE, it is**

**ORDERED**

That 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, **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 22nd day of September, 2016

\s \_\_\_\_\_  
Peter McCombs  
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 22, 2016.

La Crosse County Department of Human Services  
Division of Health Care Access and Accountability