



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION
Case #: FCP - 175416

PRELIMINARY RECITALS

Pursuant to a petition filed on July 8, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services regarding Family Care, a Medical Assistance (MA) related benefit, a hearing was held on September 1, 2016, by telephone. The hearing record was held open for ten days to allow the petitioner to submit additional documentation.

The issue for determination is whether the agency correctly determined the amount of the petitioner's Family Care (FC) cost share for June 2016 forward.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Petitioner's Representative:

[Redacted representative name]

Respondent:

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

By: [Redacted signature]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

/s/Kristin P. Fredrick
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.

2. Prior to June 1, 2016, the petitioner participated in the Community Waivers program with a cost share of \$358.04. Her case underwent a review in May 2016 and on June 21, 2016 the Department mailed petitioner a notice advising her that she would have to pay \$463.67 monthly cost share. See, Exhibit 6.
3. As of June 1, 2016, the Department budgeted gross income of \$1,486 for the petitioner based upon her receipt of social security benefits. The agency also subtracted the \$913 Basic Needs Allowance, \$56.71 in Special Housing and \$52.62 in Medical/Remedial Expense from that monthly income in calculating the petitioner’s cost share.
4. The Department’s calculation for Special Housing amount of \$56.71 was calculated based upon documentation that the petitioner provided establishing that she is paying rent of \$264 and utility expense of \$142.71 ($\$264 + \$142.71 - \$350 = \56.71).
5. The difference between the petitioner’s prior cost share and the present calculation was based upon a decrease in medical/remedial expenses and the petitioner not having provided documentation of property/renter’s insurance.
6. Following the hearing, the petitioner submitted documentation of insurance coverage at a cost of \$76.86 per year beginning September 7, 2016.

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 under Wisconsin Statutes, § 46.286, and described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. See also, Medicaid Eligibility Handbook at §38.2 et seq., available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

In this case, the petitioner has been found eligible for FC. An eligible person’s income is reviewed to determine if the recipient has enough income to be responsible for payment of a monthly “cost share.” Wis. Admin. Code § DHS 10.34(3)(b). A recipient may request a hearing on the determination of the cost share amount. Wis. Stat. §46.287(2)(a)1b.

A person who receives both a Medical Assistance card and Family Care, and is not on “regular MA” because of excess income, is classified as being in Group A, Group B, or Group “B Plus” (not relevant here). Group A is for person who receives SSI or certain other benefits that are not relevant here. The petitioner does not fit within Group A. Group B status is available to a person who has gross income below the Community Waivers MA income limit of \$2,199 in 2016. MEH, § 39.4.1. A Group B recipient may have health insurance premiums, a \$913 Basic Needs Allowance, a Special Housing Amount for excessive housing expenses, and certain medical/remedial expenses subtracted from her income before a cost share is computed. 42 C.F.R. §435.726; Wis. Admin. Code §DHS 103.07(1)(d). The petitioner’s income of \$1,486 places her in Group B.

For June 2016, the agency’s cost share computation looked like this:

Gross income	\$ 1486.00
-Basic Needs Allowance -	913.00
-Special Housing Amount -	56.71
-Med/remedial expenses -	<u>52.62</u>
Cost share	\$ 463.67

The \$913 Basic Needs Allowance was subtracted. There is no dispute that the petitioner's rent was \$264. The Special Housing Amount was calculated by starting with a \$264 rent cost, plus the \$142.71 electric utility, for total allowable housing expenses of \$406.71. From the \$406.71, a \$350 shelter cost threshold is subtracted, leaving \$56.71 to be subtracted as a deduction for special housing expenses. The agency also subtracted \$52.62 in documented medical/remedial expenses. Petitioner had not provided documentation of additional housing expenses at the time of the agency's May review or the September 1, 2016 appeal hearing. The hearing record was held open to give the petitioner time to submit additional documentation of expenses that could be factored into the calculations (i.e. higher utility expenses, renters insurance, etc.), which the department indicated it would review and apply retroactively. However, the only additional documentation received was a homeowner's binder for personal property coverage at an annual cost of \$76.86 beginning on September 7, 2016. Thus, as of June 1, 2016, the cost share was correctly calculated. See, MEH, § 28.8.3.1. The Department should apply the additional insurance expense for September 7, 2016 going forward.

Finally, the petitioner believed that because she is receiving fewer services, less supportive home care and terminated a water fitness class, her cost share calculation should also be reduced. However, the amount or cost of those services does not result in deductions from nor factor into the determination of the amount of cost share under the applicable Wisconsin statute or code. See, Wis. Stat. § 46.286(2), Wis. Admin. Code § DHS 10.34(3)(b).

CONCLUSIONS OF LAW

1. The petitioner's FC cost share as of June 1, 2016 was correctly determined;
2. The amount of cost share as of September 7, 2016 going forward shall be reduced taking into consideration the additional documented annual insurance cost of \$76.86.

THEREFORE, it is

ORDERED

That the matter be remanded for redetermination of cost share from September 7, 2016 going forward, within 10 days of this decision if it has not already done so. In all other respects the petition for review 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 13th day of September, 2016

/sKristin P. Fredrick
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 13, 2016.

Milwaukee Enrollment Services
Office of Family Care Expansion
Health Care Access and Accountability
Attorney [REDACTED]