



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MGE - 201671

PRELIMINARY RECITALS

Pursuant to a petition filed on April 2, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Door County Department of Social Services regarding Medical Assistance (MA), a hearing was held on April 28, 2021, by telephone.

The issue for determination is whether petitioner is liable for her April 2021 institutional-MA patient liability.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Door County Department of Social Services
Door County Government Center
421 Nebraska Street
Sturgeon Bay, WI 54235-0670

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Door County. She resides in long term care facility.
2. On October 6, 2020, petitioner, with the assistance of her power of attorney (POA), submitted an application for institutional-MA through the ACCESS website. Petitioner requested member notices be delivered to her on-line account. An e-mail address was included with the application.
3. Petitioner was found eligible for institutional-MA effective October 6, 2020.
4. At the time of petitioner's MA application, a special COVID-19 policy had been implemented that prevented the agency from increasing patient liability or closing a case during the emergency period.
5. On December 15, 2020, petitioner's POA contacted the county agency to report that petitioner's assets had increased above program limits. The POA was provided information about funding a burial asset as an appropriate way of spending-down assets.
6. On December 16, 2020, the county agency was informed that new federal guidelines allowed patient liability and cost-share to be increased during the COVID-19 emergency period as long as notice was provided to the member.
7. On December 28, 2020, petitioner's POA notified the county agency that she had used petitioner's assets to fund a burial asset.
8. On January 11, 2021, the county agency posted a notice to petitioner's online account. The notice informed petitioner that she would be responsible for patient liability of \$1212.20 starting February 1, 2021.
9. On January 11, 2021, an automated e-mail was sent to petitioner's POA notifying her that new information that may impact petitioner's program benefits had been posted to the online ACCESS account, including one of more letters. The e-mail contained a telephone number for the county agency. Testimony of petitioner's POA.
10. After receiving the e-mail, petitioner's POA logged into petitioner's ACCESS account to view the new information. She did not see any notices posted or any new information. The POA did not contact the county agency to determine what new information had been posted. Testimony of petitioner's POA.
11. On April 2, 2021, petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

To be eligible for "Elderly / Blind / Disabled Medicaid" ("EBD Medicaid"), a category that includes "Nursing Home Long Term Care" (also referred to as "Institutional Medical Assistance"), an unmarried individual must meet certain financial eligibility requirements. One of those requirements provides that an unmarried individual may not own countable, available assets in excess of \$2,000. Medicaid Eligibility Handbook [MEH] §16.1 and 39.4.1. Institutionalized individuals who receive Medicaid must generally pay a "cost of care" each month. This amount is referred to as a patient liability. See MEH §27.7.1.

In this case, petitioner, by her POA, did not contest the county agency's calculation of the patient liability. Instead, the POA argued that petitioner should not be liable for the April 2021 patient liability as the county agency did not provide appropriate notice that such liability would be imposed. She noted that due to special COVID-19 rules the county agency was not initially assessing patient liability. If she had

received notice of the patient liability she would have used petitioner's assets to pay that fee instead of funding a burial asset. The POA indicated that she only funded the burial asset to ensure that petitioner's assets did not exceed program limits.

The POA acknowledged receiving an automated e-mail that notified her new information had been posted to petitioner's online account on January 11, 2021. When she logged into the account, she did not see any notices posted. While the e-mailed contained a telephone number for the county agency, she did not reach out to the county agency to determine the new information. It was her belief that if the information was important it was also be sent by mail as she had received notices from the county agency in that manner in the past, even though notices were supposed to be posted to the on-line account. She noted that she contacted an ACCESS website technical support worker in April 2021 because she was not able to access the notices posted to the account. That worker told her it was common for individuals to have difficulty locating notices delivered to the on-line account. She argued that it was agency error for not providing appropriate notice that patient liability would be assessed. As such, she asked that the petitioner not be held liable for the April 2021 patient liability. No prior or subsequent patient liability was contested.

According to the agency, Process Help 58.1.3 indicates that for individuals who have chosen online delivery of notices, certain designated notices will be posted to both the online ACCESS account and mailed. The notices that will also be mailed include: Denied RFA, Withdrawn RFA, RFA extension granted, Case Renewal Summary, Verification Request, DFS Eligibility Correspondence, IPV Initial, Email change letter, Case Reopening letter, Paperless Correspondence Confirmation Letter, and Paperless Undelivered Email Letter. See, Exhibit 11. The About Your Benefits letter posted to petitioner's ACCESS account on January 11, 2021, informing her of the patient liability was not one of the notices that Process Help designated as being mailed to members who requested electronic communication. However, that notice was posted to petitioner's online account.

I understand that there was a technical glitch that prevented petitioner's POA from accessing the January 11, 2021 letter in the ACCESS account. It is not clear if that glitch was due to limitations with the computer or internet browser used by the POA or stemmed from issues with the ACCESS system. Nevertheless, the POA did receive an e-mail that provided her notice of new information being posted to the online account that may impact petitioner's benefits. In that e-mail, a telephone number was included for the county agency. While the POA attempted to view that information in the ACCESS account, she did not follow through and reach out to the agency when the notice was not found in the online system. Her assumption that the new information was not important because she did not also receive a notice in the mail was clearly erroneous. There is no information indicating that the POA had been previously informed by the county agency that all notices impacting petitioner's benefits would be both posted to the online account and mailed. Under the circumstances of this case, I am not able to find that the failure to receive notice of patient liability was due to agency error.

I would note that petitioner's argument for relief largely is based in equity or fairness. However, I am without authority to base any decision on those grounds. It is the longstanding policy of the DHA that its administrative law judges do not possess equitable powers. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp 540, 545 (E.D. Wis.1977). See also, *Village of Silver Lake, Wis. v. DOR*, 87 Wis. 2d 463 (Wis. App. 1978). DHA must limit its decisions to the law as set forth in statutes, regulations, and administrative code provisions. Based on the evidence provided, I find that petitioner is liable for her April 2021 patient liability.

CONCLUSIONS OF LAW

The agency correctly found that petitioner is liable for her April 2021 institutional-MA patient liability.

THEREFORE, it is

ORDERED

Petitioner's 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, 4822 Madison Yards Way, 5th Floor North, 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.

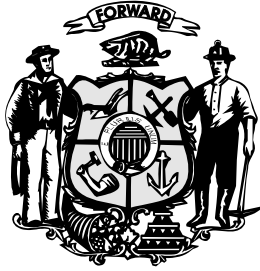
APPEAL TO COURT

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 15th day of June, 2021

\s _____
Jason M. Grace
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 June 15, 2021.

Door County Department of Social Services
Division of Health Care Access and Accountability