



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

In the Matter of

(petitioner)

DECISION

MED-14/72307

PRELIMINARY RECITALS

Pursuant to a petition filed September 20, 2005, under Wis. Stat. §49.45(5), to review a decision by the Dodge County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on November 29, 2005, at Juneau, Wisconsin. A hearing set for October 13, 2005 was rescheduled at the county's request; petitioner's representative consented to the reschedule. The record was held open 30 days with the parties' consent.

The issue for determination is whether petitioner can use old nursing home and pharmacy bills as deductions against income in determining her monthly cost of care.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Sharon Kok, ESS
Dodge County Dept. Of Human Services
143 E. Center Street
Juneau, WI 53039-1371

ADMINISTRATIVE LAW JUDGES:

Peter D. Kafkas/Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx; CARES #xxxxxxxxxx) is a resident of Dodge County.
2. Petitioner entered a nursing home in June, 2004. She applied for nursing home MA in October, 2004. In October, 2004, her representative paid \$1,500 to the nursing home against the September, 2004 bill. That payment brought petitioner's assets below \$2,000, and MA was granted effective October 1, 2004.

3. After the \$1,500 payment, petitioner still owed some \$3,500 on the September, 2004 nursing home bill. Petitioner also owed pharmacy bills from prior to October 1, 2004.
4. In late 2005 petitioner's representative became aware of an opinion that unpaid, pre-MA eligibility medical bills could be paid with current income, and the payments could be deducted from income for current cost of care purposes. A request was made at the county to review whether payments on the nursing home and pharmacy bills could be deducted. The county denied the request on the basis that only current medical expenses can be deducted for cost of care purposes.

DISCUSSION

As a first point, the hearing in this case was conducted by ALJ Peter D. Kafkas. Before drafting a decision, Mr. Kafkas left the Division of Hearings and Appeals. The file was transferred to ALJ Brian C. Schneider. Before drafting this decision I reviewed all documents in the file and listened to the recording of the November 29 hearing. I concluded that another hearing was unnecessary, and I am drafting the decision based upon the record made before Mr. Kafkas.

Institutionalized MA recipients must apply all available income toward their cost of care. Wis. Adm. Code, §HFS 103.07(1)(d); MA Handbook, Appendix 5.8.7. Cost of care is determined by taking gross income, allowing certain specified deductions, and applying the remainder to the monthly nursing home expense. "Available income" as defined in the Wisconsin Administrative Code is all income minus the following deductions: a \$40 personal needs allowance, an earned income deduction, health insurance premiums, medical expenses not covered by MA, support for persons for whom the recipient is responsible, and monthly home maintenance if the person expects to return home. Id.

42 C.F.R. §435.725(c)(4) provides that in determining cost of care for a categorically-needy MA recipient the agency must deduct from income "incurred expenses for medical or remedial care that are not subject to payment by a third party, including ... (ii) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid Plan, subject to reasonable limits the agency may establish on amounts of these expenses." See also 42 C.F.R. §435.832(c)(4) for identical language for medically-needy individuals. The Wisconsin Administrative Code, §HFS 103.07(1)(d)4 provides that available income for cost of care purposes includes income remaining after deductions that include "[n]ecessary medical or remedial expenses recognized under state law but not covered by MA."

The state agency, however, limits the deduction to current expenses. The MA Handbook, App, 4.1.3.3 makes clear that to be deducted, such expenses must be "anticipated incurred expenses."

Petitioner's daughter presented an opinion by the Center for Medicare and Medicaid Services (CMS) that old medical/nursing home bills can be used as deductions from current income in determining monthly cost of care amounts. She also presented an article from *The Guardian*, from the second quarter, 2005 that asserts that Wisconsin's state MA plan does not limit the deduction to current medical expenses.

The CMS opinion concerned an issue in Maryland, and thus it cannot be ascribed to mandate Wisconsin coverage. In addition, the state would have every right to question the CMS opinion since the federal code allows the deduction specifically for medical expenses not covered by the State's Medicaid Plan. Nursing home and pharmacy services are covered services in Wisconsin's MA plan; they were not covered in this instance because petitioner was not eligible when they were incurred. While one could speculate how the federal department would view Wisconsin's coverage, it is evident that Wisconsin allows only current expenses to be deducted from current income for cost of care purposes.

CONCLUSIONS OF LAW

For nursing home cost of care purposes, Wisconsin allows income deductions only for current medical expenses not covered by MA or other insurance.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found 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 no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The appeal must be served on the Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Milwaukee, Wisconsin, this 17th day of
March, 2006

/s/Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals
0317/bcs