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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: CWA - 211081

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on November 16, 2023, under Wis. Admin. Code § HA 3.03, to review a decision by the Oneida Tribe Social Services regarding Medical Assistance (MA), a hearing was held on December 13, 2023, by telephone.

The issue for determination is whether the agency correctly calculated petitioner's income including tribal payments that she receives.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Melissa Staub  
Oneida Tribe Social Services  
2640 West Point Rd.  
PO Box 365  
Oneida, WI 54155

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.

2. Prior to October, 2023, the respondent did not include tribal General Welfare Assistance (GWA) payments when calculating eligibility for MA benefits.
3. On September 19, 2023, the respondent was directed by the Department of Health Services to include GWA payments in calculating MA benefits eligibility.
4. On October 17, 2023, the respondent issued an About Your Benefits notice to petitioner indicating that her MA enrollment would end on November 1, 2023, due, in pertinent part, to income exceeding program limits.
5. Petitioner's income exceeded program limits for SLMB+ in October of 2023. The household income consisted of Social Security income, as well as GWA income. Based upon her household income, petitioner was also assessed a community waiver cost share in the amount of \$316.68, effective January 1, 2024, according to the respondent's testimony at hearing.

### DISCUSSION

At issue in this case is the respondent's inclusion of petitioner's GWA income when determining the eligibility of petitioner for MA program enrollment and the community waivers program (Family Care) with a cost share.

At the hearing, the petitioner did not dispute the agency's calculations. Instead, petitioner argued that her GWA income should not be counted for MA purposes, since the payment did not need to be reported to any taxing authority. That does not logically equate to a conclusion that GWA payments are not to be budgeted as income for MA eligibility determinations. The respondent is not a taxing authority, and MA eligibility is not based upon taxable income. GWA payments are considered countable income according to the agency's policy handbook:

Disregard the following payments to Native Americans:

1. Menominee Indian Bond interest payments
2. All judgment payments to tribes through the Indian Claims Commission or Court of Claims
3. Payments under the Alaskan Native Claims Settlement Act
4. Payments under the Maine Indian Claims Settlement Fund
5. Payments under PL 93-124 to the Sisseton-Wahpeton Sioux Tribe, except individual shares over \$2,000
6. Payments under PL 93-134 to the Maricopa Ak-Chin Indian Community, Navajo Tribe, Coast Indian Community of the Resighini Rancheria, Stillaguamish Tribe, Pueblo of Taos Tribe, Walker River Paiute Tribe, and White Earth Band of the Minnesota Chippewa Tribe, except individual shares over \$2,000
7. Payments under PL 94-114 to the Bad River Band and Lac Courte Oreilles Band of Chippewa Indians and the Stockbridge-Munsee Indian Community of Mohicans
8. Payments under PL 96-318 to the Delaware Tribe of Kansas and of Idaho
9. Payments under PL 96-420 to the Houlton Band of Muliseet Indians, the Passamoquoddy, and Penobscot
10. For EBD Medicaid cases, under PL 98-64, disregard all Indian judgment funds held in trust by the Secretary of the Interior for an Indian tribe and distributed on an individual basis to members of the tribe. Also disregard interest and investment income from these funds
11. Payments under PL 99-346, Saginaw Chippewa Indian Tribe of Michigan

12. Payments under PL 99-377 to the Mille Lacs, Leech Lake, and White Earth, Minnesota reservations
13. Payments under PL 101-41, Puyallup Tribe of Indians Settlement Act of 1989
14. Payments under the Distribution of Judgment Funds Act of 1987 to the Cow Creek Band, Umpqua Tribe
15. Payments under the Distribution of Indian Judgment to the Crow Creek and Lower Brule Sioux except individual shares over \$2,000
16. Payments under the settlement of the Cobell v. Salazar class-action trust case
17. Non-gaming tribal income from the following sources:
  1. Distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from one of the following:
    - i. Rights of ownership or possession in any lands held in trust, subject to federal restrictions, located within the most recent boundaries of a prior federal reservation or otherwise under the supervision of the Secretary of the Interior
    - ii. Federally-protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources
  2. Distributions resulting from *real property* ownership interests related to natural resources and improvements:
    - i. Located on or near a reservation or within the most recent boundaries of a prior federal reservation or
    - ii. Resulting from the exercise of federally-protected rights relating to such real property ownership interests.
18. Disregard Tribal Per Capita payments from gaming revenue up to the first \$500 of the monthly payment per individual. If the payments are received less than monthly, prorate the gross payment amount over the months it is intended to cover and disregard \$500 from the monthly amount.

This applies to eligibility determinations for all Medicaid subprograms for elderly, blind, or disabled persons except the following:

1. SeniorCare
2. LTC programs, such as the following:
  - i. Institutional Medicaid
  - ii. HCBW
  - iii. Managed LTC or IRIS

For these subprograms, which are treated differently because they are covered under a different section of federal law, count all income from Tribal Per Capita payments from gaming revenue as unearned income.

19. Per capita payments from a tribe that come from natural resources, usage rights, leases, or royalties
20. Payment from natural resources, farming, ranching, fishing, leases, or royalties from land designated as Indian trust land by the Department of Interior (including reservations and former reservations)
21. Money from selling things that have cultural significance
- 22. Tribal general welfare payments *that are based on the individual's demonstration of need, even if the source of the payment is gaming revenue***

MEH § 15.3.14 (emphasis added).

The petitioner failed to establish that the GWA payments constituted tribal general welfare payments based upon “need,” and conceded at hearing that it was her understanding that the payments were not based upon need. As a result, I must conclude that the respondent correctly included the GWA income when determining her MA eligibility and cost share as the GWA income is not exempt or disregarded income pursuant to MA policy.

Petitioner is encouraged to reapply for MA benefits if and when the GWA payments end or the petitioner’s financial situation otherwise changes. In essence, petitioner is seeking equitable relief. While I empathize with the difficulties faced by the petitioner and her family, an administrative law judge does not have authority to grant equitable relief from the MA regulations. I find no error in the agency’s determination that the petitioner’s GWA income must be counted for MA purposes.

### CONCLUSIONS OF LAW

The respondent correctly included petitioner’s GWA income when determining her ongoing MA eligibility.

**THEREFORE, it is**

**ORDERED**

That 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, 5<sup>th</sup> 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**

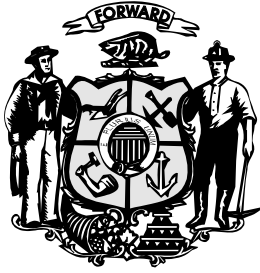
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 8th day of February, 2024

A handwritten signature in blue ink, appearing to read 'Peter McCombs', written over a horizontal line.

\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 February 8, 2024.

Oneida Tribe Social Services  
Bureau of Long-Term Support