



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MGE - 210955

PRELIMINARY RECITALS

Pursuant to a petition filed on November 7, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Marathon County Department of Social Services regarding Medical Assistance (MA), a hearing was held on January 17, 2024, by telephone.

The issue for determination is whether the agency correctly determined petitioner’s patient liability.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:




Respondent:

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

By: Gaoshoa Lor
Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Clark County.
2. The petitioner has had institutional MA since March 5, 2021, with no lapse in coverage.

3. Petitioner was discharged and re-admitted three times between March 5, 2021 and April 21, 2023. The first admission was to [REDACTED] on March 5, 2021, and then she was transferred to [REDACTED]. She was discharged home on May 14, 2021. The second admission to the hospital was on June 28, 2021, transferred back to [REDACTED] and discharged home again on August 12, 2021. The third admission to [REDACTED] was on April 21, 2023 and she remained a resident there until an unknown specific date in early January, 2024.
4. There were times when petitioner returned home, but her benefits were not closed due to the Pandemic Health Emergency period; therefore, the patient liability was zeroed out. In addition, the agency was not notified of petitioner's discharge and re-admission in August of 2021 and April of 2023.
5. The agency requested updated shelter and utility expenses to apply another home maintenance deduction for 6 months. The due date was November 13, 2023, but no updated information was received from the petitioner or from [REDACTED].

DISCUSSION

After an institutionalized person is determined eligible for MA, a county agency must calculate the amount of income the institutionalized person must contribute to defray the cost of care incurred by MA on his or her behalf on a monthly basis. This is referred to as the person's "patient liability." The calculation begins with gross income, and only a few items may be subtracted as deductions. These include the statutory \$45 personal needs allowance deduction, a health insurance expense deduction and, in some cases, a home maintenance deduction. Wis. Admin. Code §DHS 103.07(1)(d), and the federal rule at 42 C.F.R. §435.725 - .832. The formula for calculating the patient liability amount is set out at Medicaid Eligibility Handbook (MEH), §27.7.1, found online at http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm#t=policy_files%2F27%2F27.7.htm.

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 28.6.4 COST SHARE AMOUNT.
- 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.

MEH §27.7.1.

The petitioner does not have earned income, and thus is not entitled to an earned income disregard. See, MEH §15.4 and 15.5 (for what qualifies as earned and unearned income). In 2021, she received a home maintenance deduction of \$960.00, based upon her physician’s verification of her ability to return home, dated March 15, 2021. The record does not contain any expenses associated with establishing or maintaining a court-ordered guardianship or protective placement. The agency also applied deductions for a personal allowance and health insurance premiums.

In 2023, the agency submitted a verification request to petitioner dated November 16, 2023. Shelter and utility expenses, as well as an updated physician verification of petitioner’s ability to return home, were requested and a due date of December 5, 2023, was indicated. No such verifications were subsequently provided to the agency.

Based upon the record before me, I find no error by the agency in determining petitioner’s patient liability. Petitioner is encouraged to provide the agency with her ability to return home verification and shelter/utilities information in order that the agency may review whether it may retroactively adjust her patient liability.

CONCLUSIONS OF LAW

The petitioner has not established any error by the agency in calculating her patient liability in 2023.

THEREFORE, it is ORDERED

That petitioner’s appeal is hereby 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 21st day of February, 2024



\s _____
Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705-5400

Telephone: (608) 266-7709
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 21, 2024.

Marathon County Department of Social Services
Division of Health Care Access and Accountability
gaoshoua.lor@co.marathon.wi.us