



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MGE - 211311

PRELIMINARY RECITALS

Pursuant to a petition filed on December 4, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Oneida Tribe Social Services regarding Medical Assistance (MA), a hearing was held on February 1, 2024, by telephone.

The issue for determination is whether the State of Wisconsin's Department of Health Services (hereafter, respondent) correctly counted payments that she receives from the Oneida Tribe when calculating her patient liability as of November 1, 2023.

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: Wendy Haack, Economic Specialist
Oneida Tribe Social Services
2640 West Point Rd.
PO Box 365
Oneida, WI 54155

ADMINISTRATIVE LAW JUDGE:
Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 94-year old member of the Oneida Nation. She resides in a skilled nursing facility and receives Institutional Medical Assistance (hereafter, MA) benefits.
2. Petitioner's income includes \$2,264.90 in gross monthly Social Security benefits and, in 2023, an average of \$350.29 of monthly GWA income. Her total gross monthly income is therefore \$2450.29. She has a \$164.90 Medicare Part B premium deducted from her Social Security each month.
3. On September 18, 2023, the Oneida Nation income maintenance agency (hereafter, "IM agency") was directed by respondent to include General Welfare Assistance payments in calculating MA benefits eligibility and monthly patient liability amounts. The IM agency had not done so previously.
4. On October 13, 2023, the IM agency issued an About Your Benefits notice to petitioner indicating that her patient liability would increase from \$2,055 to \$2,405.29 as of November 1, 2023 as a result of the inclusion of her GWA payment in her countable income.
5. On December 3, 2023, Petitioner filed a request for fair hearing regarding the increase in patient liability and to assert undue hardship.

DISCUSSION

At issue in this case is the respondent's inclusion of petitioner's GWA income when determining patient's patient liability.

Petitioner argued that her GWA income should not be counted for EBD-MA purposes pursuant to Section 15.3 of the Medicaid Eligibility Handbook. That section of the Medicaid Eligibility Handbook reads in its entirety as follows:

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). Petitioner did not identify which of the above enumerated payment types she believes apply to her circumstances; however, Respondent contends that the payment at issue is a general welfare payment, that it is not based on a demonstration of need, and that it must therefore be counted. At hearing, the IM agency confirmed that applicants are not required to meet any financial eligibility requirements to qualify for the payment that Petitioner receives.

Petitioner also argued that the payments she receives should not be counted in calculating her patient liability because the payment is not taxable. However, the respondent is not a taxing authority and neither EBD-MA eligibility nor patient liability amounts are based upon taxable income. (This is distinct from BadgerCare Plus, a Wisconsin Medical Assistance Plan available to eligible individuals under age 65, which borrows heavily from the U.S. Tax Code).

Based on the evidence in the record, I conclude that the respondent correctly included the GWA income when determining Petitioner's patient liability.

I note that it appears the GWA payment Petitioner receives may change on an annual basis. This may therefore result in her patient liability going up or down in the future.

Petitioner also requested that the patient liability be reduced based on an allegation of undue hardship. The Division of Hearings and Appeals must apply the law as it is written and reasonably interpreted by regulation and policy. The legal authorities here do not grant DHA the authority to reduce patient liability amounts based on allegations of undue hardship or other good cause reasons.

While I empathize with the difficulties faced by the petitioner and her family, I find no error in the IM agency's determination that the petitioner's GWA income must be counted for MA purposes and do not have the discretion to ignore the relevant policy.

CONCLUSIONS OF LAW

The IM agency correctly included petitioner's GWA income when determining her patient liability as of November 2023.

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, 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).

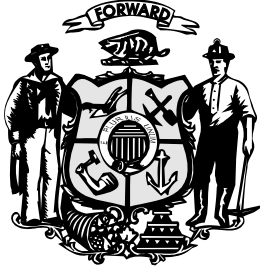
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 19th day of March, 2024



\s _____

Teresa A. Perez
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 March 19, 2024.

Oneida Tribe Social Services
Division of Health Care Access and Accountability