



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MGE - 212097

PRELIMINARY RECITALS

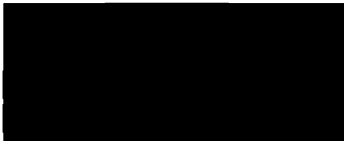
Pursuant to a petition filed on February 8, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services regarding Medical Assistance (MA), a hearing was held on April 4, 2024, by telephone. A hearing scheduled for March 20, 2024, was rescheduled at the request of petitioner's power of attorney (POA).

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: Dana Lee
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 94 year-old resident of Jackson County. She is enrolled in institutional-MA. She is widowed.
2. On or about January 17, 2024, the petitioner's POA called the agency reporting that petitioner has insufficient money to pay the patient liability. The Case Comments indicate the petitioner has income from social security (\$1043, after deduction of \$174.70 for Medicare Part B), royalties (\$1,706.87), and rental income as reported in her 2022 Schedule E (\$473.25/month).
3. On March 11, 2024, the agency received a Self-Employment Income Report form. It reflected income from royalties as follows: \$1,549.07 for October 2023; \$1,587.77 for November 2023; \$1,343.91 for December 2023; and \$1,080.36 for January 2024.
4. On March 13, 2024, the agency issued to the petitioner's POA a notice that indicated the patient liability would be \$2,861.53 as of April 1, 2024. The agency's determination of patient liability was based on gross monthly income of \$3,081.23. This was from social security of \$1,217.70, royalties from gas/mineral rights of \$1,390.28, and rental income of \$473.25. The agency provided deductions of \$45.00 for a personal needs allowance and \$174.70 for health insurance premium (Medicare Part B).
5. The petitioner filed an appeal with the Division of Hearings and Appeals.

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).

...

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.

In this case, the agency correctly found the petitioner had monthly income of \$3,081.23 as of its determination of March 13, 2024. This was comprised of social security of \$1,217.70, royalties from gas/mineral rights of \$1,390.28, and rental income of \$473.25. The monthly gas/mineral royalties fluctuate. Thus, the agency averaged the monthly amounts reflected in the four most recent statements provided by the petitioner's family (October \$1,549.04; November \$1,587.77; December \$1,343.91; and January \$1,080.36). This four month average was the monthly amount reflected above (\$1,390.28).

As to the patient liability calculation, 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). She also did not qualify for the home maintenance costs reduction as she is not likely to return home within six months. See, MEH §15.7.1. The record also does not contain any expenses associated with establishing or maintaining a court-ordered guardianship or protective placement. The agency did apply deductions for a personal needs allowance (\$45.00) and health insurance premiums (\$174.70). See, MEH § 39.4.3 (personal needs allowance). No other medical expenses or qualifying remedial expenses under MEH § 27.7.7 were provided to the agency.

At hearing, the petitioner's POA reported that the rental income had stopped in 2023 and the monthly royalty payments (gas/mineral rights) varied dramatically. As noted by the agency representative, changes in income cannot be acted on by the agency until reported, and "are always effective the first of the month in which the decrease in income occurs or the decrease is reported, whichever is later." MEH § 27.10. There was no argument that the discontinuance of rental income had not been reported to the agency prior to the hearing. Thus, I can find no error in the agency's inclusion of that income in the agency's March 13, 2024 determination of patient liability. As to the royalty payments, it is my understanding that the agency was initially basing that on the amount reflected in the petitioner's 2022 taxes. As her 2023 taxes were not completed by March 2024, the agency directed the POA to submit a SERF if the 2022 taxes no longer accurately reflected monthly royalty income. That was submitted for the months of October 2023-January 2024, and received by the agency on March 11, 2024. The agency then averaged the four months of income reflected in the SERF to arrive at the royalty income used in the March 13, 2024, calculation. This is consistent with the requirements set forth in MEH § 15.6.5. I find no error in the agency's March 13, 2024 calculation of patient liability.

To a degree, the POA argued at hearing that the patient liability should 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.

Finally, I would note that the POA had forwarded updated income information to the agency shortly prior to hearing. At hearing, the POA also indicated that she would be forwarding to the agency the 2023 tax filing along with additional information pertaining to monthly royalty income. Upon receipt, the agency should redetermine patient liability and provide notice of the results of that determination to the petitioner/POA. The petitioner/POA would be able to file a new appeal seeking review of any new determination (of lack thereof) of patient liability.

CONCLUSIONS OF LAW

The agency correctly determined petitioner's patient liability.

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

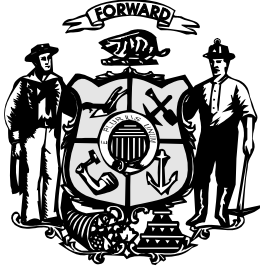
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 6th day of May, 2024

\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 May 6, 2024.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability