



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



**DECISION**  
Case #: MGE - 201844

**PRELIMINARY RECITALS**

Pursuant to a petition filed on April 21, 2021, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Waukesha County Health and Human Services Department (the agency) regarding Medical Assistance (MA), a hearing was held on June 10, 2021, by telephone.

The issues for determination are 1) whether the agency correctly determined the petitioner's patient liability; and 2) whether the petitioner is eligible for an undue hardship waiver.

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: , ESS  
Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Waukesha County.
2. On March 30, 2021, the agency sent a notice to the petitioner stating that effective March 1, 2021 he was enrolled in MA (Nursing Home Long Term Care) and had a patient liability of \$2194.

## DISCUSSION

After an institutionalized person has been found eligible for MA, the agency must calculate a “cost of care” or patient liability. Patient liability is the amount that s/he will pay each month to partially offset the cost of nursing home services with the MA program paying the balance. The liability amount is typically calculated by subtracting from the recipient’s income, any health insurance premium costs, support payment costs, home maintenance costs, expenses for court-ordered guardians or protective placements, and a statutory personal needs allowance. The funds remaining after these deductions are considered is determined to be available for payment to the nursing home by the recipient. See Medicaid Eligibility Handbook (MA Handbook), §27.7. 1 (Exhibit 7); see also Wis. Stat. §49.45(7)(a), Wis. Adm. Code § DHS 103.07(1)(d), and 42 CFR §435.725.

Petitioner does not dispute the calculation per se, but rather is asking that the petitioner’s bankruptcy settlement payments be considered an allowable deduction to the patient liability because he cannot afford to pay both. Unfortunately for the petitioner, the law and policy clearly explain the costs which may be reviewed in determining an individual’s patient liability toward his cost of care. Bankruptcy payments are not specifically listed as an allowable deduction. I can find no authority in federal law or in state law or policy for a deduction from petitioner's gross income for this expense when determining the patient liability.

Further, while I understand the patient liability may cause a hardship for petitioner, the hardship exceptions do not apply to petitioner’s case. Undue hardship exceptions can be made only when eligibility for long-term care services is denied or terminated for divestment issues, spousal impoverishment issues, or in cases involving situations where the member’s home has an equity interest of more than \$750,000. See MA Handbook §22.4.1. These do not apply to the petitioner’s case. Beyond the legal allowances, petitioner’s representative’s argument is an equitable argument, and I lack the equitable powers (the ability to change the course of the action based on any fairness argument) to grant the relief sought. See Oneida County v. Converse, 180 Wis.2nd 120, 125, 508 N.W.2d 416 (1993).

## CONCLUSIONS OF LAW

The agency correctly determined the petitioner's patient liability; and  
The petitioner is not eligible for an undue hardship waiver.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein 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, 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.

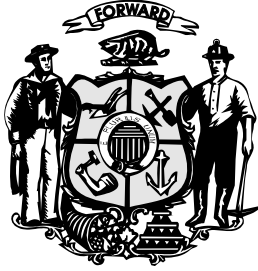
## **APPEAL TO COURT**

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 Milwaukee,  
Wisconsin, this 12th day of July, 2021

\s \_\_\_\_\_  
Kelly Cochrane  
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 July 12, 2021.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability