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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 #: FCP - 208218

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on April 3, 2023, under Wis. Admin. Code § DHS 10.55, to review a decision by the Marathon County Department of Social Services regarding Medical Assistance (MA), a hearing was held on May 17, 2023, by telephone.

The issue for determination is whether the petitioner is entitled to a retroactive adjustment to her cost share for November 2022.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Anthony Meier

Marathon County Department of Social Services  
400 E. Thomas Street  
Wausau, WI 54403

**ADMINISTRATIVE LAW JUDGE:**

Beth Whitaker  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County.
2. On September 6, 2022, petitioner applied for Wisconsin Medicaid benefits, specifically Family Care and Long-Term Care Waiver program.
3. On September 30, 2022, the petitioner's authorized representative [REDACTED] completed a telephone interview in which he provided the information that petitioner's housing expenses was estimated at "about \$350 per month."
4. The agency requested verification of expense information, due October 13, 2022.
5. On September 30, 2022, the petitioner submitted a 2021 property record for [REDACTED] [REDACTED] showing shared that it was owned by petitioner and [REDACTED].
6. On October 3, 2022, the agency issued to petitioner a summary of information she provided in her application and instructed her to report incorrect information by October 12, 2022.
7. On November 22, 2022, the agency issued to petitioner an About Your Benefits notice informing her that effective November 16, 2022, she was enrolled in Community Waivers, with a monthly cost share obligation. The determination was based on housing expense of \$350.
8. On November 22, 2022, the agency issued to petitioner a summary of information she provided and instructed her to report any incorrect information by December 1, 2022.
9. On December 28, 2022, petitioner and her daughter [REDACTED] contacted the agency by telephone to report increased shelter expense.
10. On December 29, 2022, the agency issued to petitioner Notice of Proof Needed regarding shelter, utility, and water costs, due by January 9, 2023.
11. On January 6, 2023, petitioner submitted property insurance declarations for 180 Woodview Drive and a monthly utility statement and evidence of payment of both.
12. Based on expense verification submitted on January 6, 2023, the agency reduced petitioner's cost share obligation effective December 1, 2023.
13. On January 16, 2023, the agency issued to petitioner an About Your Benefits notice, informing her that effective January 1, 2023, she was enrolled in Community Waivers and Medicare Savings Program (SLMB) with no copay. The deadline to appeal the determination was March 3, 2023.
14. On April 5, 2023, the Division received petitioner's request for hearing, postmarked April 3, 2023.

## DISCUSSION

The FCP is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized under Wisconsin Statutes, §46.286, and is described in Wisconsin Administrative Code Chapter DHS 10. See also, Medicaid Eligibility Handbook (MEH) at §28.1 et seq., available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. A person, like this petitioner, who is determined to be financially eligible in the FCP must contribute to the cost of his or her care an amount that is calculated by the agency after subtracting from the person's gross income, plus one-twelfth of countable assets, the deductions and allowances permitted by the agency's rule(s). See Wis. Stat. §46.286(2)(a).

In this case, the petitioner was properly notified of his cost share amounts, which were correctly calculated based on the information the agency had at that time, including the estimated shelter expense information provided by the authorized representative by telephone in a recorded interview on September 30, 2022.

Also on September 30, 2022, a document was received providing the actual property tax information for the property at [REDACTED] (Exhibit 5). Due to scanning delays, this was not visible at the time of interview. Instead, it was processed on October 10, 2022. However, as both [REDACTED] and [REDACTED] were listed as owners, the agency could not determine what her portion of that expense was based on this document. Even had this been used, it would have been lower expenses than reported at application,  $\$2992.85/12=\$249.40/\text{month}$  of expenses, versus the \$350 reported at interview. As such, it was not used to change the expense reported at the interview.

No verification or correction showing increased shelter expense was submitted until late December 2022. It was processed and correctly applied for December 2022 and subsequent months. November 2022 cost share was not updated because the program rules prohibit doing that:

“Decreases in patient liability or cost share are always effective the first of the month in which the decrease in income occurs or the decrease is reported, which is later.”

Medicaid Eligibility Handbook 28.6.4,

Unfortunately, I can find no legal basis for re-doing the cost share amount in a situation where the petitioner or her representative did not timely report the income change to the economic support agency. She is required by state code to report significant changes to income within 10 days of their occurrence. Wis. Admin. Code §§DHS 10.32(3), 10.34(3)(f)3, & 104.02(6); see also MEH, §12.1. Decreases in cost shares are always effective the first of the month in which the decrease in income occurs or the decrease is reported, whichever is later. See MEH §28.6.4. The agency does not make retroactive changes upon receiving a late report of an income decrease, and I do not have the legal authority to order the agency to do so based on a fairness argument. I understand the representative’s position that he believes he did report the correct information at application or shortly thereafter and I sympathize with the difficulty of providing this information, however, he could provide no proof and the agency’s records appear correct and complete. I have no basis for finding that the correct shelter expense was submitted before the telephone call to the agency on December 28, 2022.

In the event that petitioner finds it unfair to deny the request to apply the information submitted on December 28, 2022 to the November 2022 cost share calculation, it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### CONCLUSIONS OF LAW

Where the petitioner did not report increased shelter expense for November 2022 until December 2022, no remedy exists to retroactively reduce her cost share amounts for that period.

**THEREFORE, it is**

**ORDERED**

That the petition for review 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

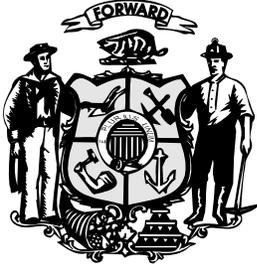
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 12th day of June, 2023

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Beth Whitaker  
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 June 12, 2023.

Marathon County Department of Social Services  
Office of Family Care Expansion  
Health Care Access and Accountability