FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION ON REMAND
Case #: MGE - 207353

PRELIMINARY RECITALS

Pursuant to a petition filed on January 11, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dodge County Human Services regarding Medical Assistance (MA), a hearing was held on March 1, 2023. On March 28, 2023, a Decision was issued. On April 17, 2023, the Division received petitioner's request for fair hearing (MGE 208326). On May 3, 2023, petitioner filed its Amended Request for Rehearing asking that its April 17, 2023 request be treated as a request for rehearing in this matter, based on an assertion of material error of law, in addition to its request, filed the same day, for a new hearing (MGE 208326). On May 17, 2023, the rehearing request was granted. On May 31, 2023 the rehearing was convened, by telephone. This Decision on Remand replaces in its entirety the final Decision previously issued on March 28, 2023.

The issue for determination is whether the agency correctly required verification of payment of a medical expense in order to apply it to reduce to the institutionalized person's monthly patient liability.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Petitioner's Representative:

Brenda Haskins
Haskins, Short & Brindley LLC
5113 Monona Dr
Monona, WI 53716

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
By: Nathaniel Wissell
Dodge County Human Services
199 Cty Rd DF
Juneau, WI 53039

ADMINISTRATIVE LAW JUDGE:
Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of [redacted], a skilled nursing facility in Dodge County.
2. Until some date in November 2022, petitioner received Medicare benefits.
3. On December 14, 2022 the agency issued to petitioner a notice informing him that effective December 1, 2022 he was eligible for Medicaid Institutional Long Term Care program benefits.
4. Petitioner's monthly Medicaid patient liability was determined to be $982 for December 2022 and $1089 beginning in January 2023.
5. On December 20, 2022, [redacted] issued a statement of accounting stating that $7,252 was due by November 1, 2022 for room and board from November 8, 2022 to November 30, 2022 for petitioner, in the amount of $7,252, of an initial balance of $8,234, after a payment of $982.
6. On January 2, 2023, petitioner's representative requested that the Capital Consortium apply an ongoing credit of $1,089 per month toward petitioner's monthly Medicaid patient liability of $1,089, beginning in January 2023 based on the December 20, 2022 statement.
7. On January 9, 2023, the agency issued to petitioner a Notice of Proof Needed, informing him that to get or keep Nursing Home Long-Term Care benefits, he must provide proof of items listed by January 18, 2023.
8. Petitioner failed to provide any evidence of an agreement or obligation to pay the medical expense in any particular amount or by any particular date.
9. On January 11, 2023, the Division received petitioner's request for hearing by fax.

DISCUSSION

Medical Assistance (MA) rules require that after an institutionalized person is determined eligible for MA, an 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. 42 CFR §435.725. Wisconsin law specifically allows only $45.00 to be retained by institutionalized persons as a personal needs allowance. Wis. Stat. §49.45(7)(a) further provides that " . . . the recipient shall apply income in excess of $45.00, less any amount deducted under rules promulgated by the department, toward the cost of care in the facility." (Emphasis added). Based on what was provided at hearing, the personal allowance and the medical bill are the only available deductions to petitioner. Also see…..The rules referred to in the above statute are found in the Wisconsin Administrative Code. Wis. Admin. Code §DHS 103.07(1)(d) and MEH 27.7.1. for what expenses may be considered in determining patient liability toward cost of care.

The Medicaid Eligibility Handbook (MEH) Section 27.7.1 states:

> After an institutionalized person has been determined eligible for Medicaid, his or her cost of care must be calculated. Cost of care is the amount the person will pay each 3 month to partially offset the cost of his or her Medicaid services. It is called the patient liability amount when applied to a resident of a medical institution, including those enrolled in Family Care, Family Care Partnership, or PACE who are in or likely to be in a medical institution for 30 or more days. Institutionalized people are expected to pay their patient liability to the institution they are residing in, or to their MCO if they are enrolled in Family Care, Family Care Partnership, or PACE, as of the first day of the month.

Petitioner does not dispute patient liability calculation. Petitioner asks that he be allowed to pay for past due nursing home bill from his patient liability under authority of MEH 27.7.7.1, by receiving a credit in the amount of $1,089 per month. Medicaid members in nursing homes are allowed to pay for some medically necessary noncovered services out of their patient liability. They are not required to use their

personal needs allowance for these services. The agency does not dispute that this type of payment may qualify as a credit toward the patient liability. It takes the position that the petitioner has not provided information sufficient to verify the payments will actually be made to correspond to the monthly patient liability deduction requested.

The agency's January 9, 2023 Notice of Proof Needed explained: "Please provide a signed repayment agreement or other verification from [redacted] showing your payment of your existing balance of $7,252 with the nursing home for November 2022 room & board. This repayment agreement should indicate the amount you are paying each month, as well as the month the payments will both begin and end. This is required per Medicaid Handbook Sec. 27.7.7.1 as prior to allowing the deduction we must verify that the expense is being actually paid, not just owed.'

At hearing, petitioner maintained that it had met the requirements in the Medicaid Handbook Sec. 27.7.7.1 that "(t)he institutionalized person must provide verification of the allowable expense." Petitioner's position was that it is sufficient to provide proof that the medical expense was incurred and that no legally liable third party is responsible for the expense. Those facts were not in dispute. The dispute was that the agency took the position that it must verify that the incurred expense had been, was being or would be actually paid by the petitioner while petitioner's position was that "actual payment" meant that "no one else will be paying the bill."

The Decision issued following the hearing on March 1, 2023 dismissed the appeal based on findings that the agency's medical expense deduction verification requirement was consistent with its Medicaid Handbook. On rehearing, the petitioner asserted that the agency's verification requirement in its Medicaid Handbook and as imposed by the agency representative, Nathaniel Wissell, is prohibited by relevant federal law.

At rehearing, petitioner did not present authority for an express prohibition of verification of actual payment or for the idea that "actual payment" means that there is no legally liable third party. The petitioner's legal argument at rehearing, presented orally and contained in its May 12, 2023 submission, is that federal law prohibits the agency from verifying that the incurred expense is actually paid.

Federal statute regarding the medical expense deduction from patient liability cited by petitioner provides that incurred expenses for medical or remedial care without a third party legally liable for payment "shall be taken into account" (42 USC Sec. 396(a)(r)(l)(A)). This is not disputed. It states that these deductions are "subject to reasonable limits the state may establish on the amount of these expenses." Id. In this case, there is no dispute about the total incurred expense. The agency does not seek to limit the amount.

Petitioner further cites 42 CFR Sec. 435.725 regarding the rules regarding determination of medical expenses, addressing methods for projecting medical expenses. 43 CFR Sec. 435.725 (f). This is not relevant to the current dispute. The medical expense in this is not being projected. It has been incurred and the amount is not in dispute. Petitioner cites Wisconsin Admin. Code Sec. DHS 103.07(1)(d) for the idea that necessary medical or remedial care expense is included in calculation of cost of care. This is not disputed.

The law relevant to the dispute in this case is the definitions of "medical expense" and "remedial expense" in Wis. Admin. Code Sec. DHS 101.03. "'Medical expense' means a cost paid by a Medicaid purchase plan recipient for goods or services that have been prescribed or provided by a medical practitioner licensed in Wisconsin or another state. The cost is not reimbursable by another source such as Medicare, medical assistance, private insurance, or an employer." Wis. Admin. Code DHS Sec. 101.03(94r). The definition for "remedial expense" similarly requires that the cost be "paid". Wis. Admin. Code Sec. DHS 101.03(152m).

These definitions are consistent with the agency's position that there is a requirement for actual payment. There is nothing in these definitions that prohibits verification of the fact that the expense has been, is being or will be paid. No federal law prohibits the agency from requiring verification that the expense is or will be paid. There is no law cited by petitioner that prohibits the agency from requiring a written repayment agreement or similar evidence of obligation to make payments, and to vary the specific verification requirement on a case-by-case basis. No proof of a monthly payment obligation corresponding to the requested monthly deduction was offered. No explanation was offered for petitioner's inability or refusal to provide such an agreement and petitioner did not show that the request was unreasonable or unduly burdensome.

The petitioner failed to show that the agency's Medicaid Handbook, or its interpretation of that Handbook, is in any way inconsistent with relevant federal law. It is reasonable and permissible for the agency to require evidence that an enforceable payment agreement actually exists between petitioner and the creditor in order to determine that the relevant medical expense meets the definition of being "paid" included in the definition of medical expense in Wis. Admin. Code 101.03(94r), before applying it as a deduction to patient liability for the period of time requested.

CONCLUSIONS OF LAW

The agency acted within its authority under its Medical Handbook and all relevant Wisconsin and federal law in refusing to apply deductions to monthly patient liability in the amounts requested, without evidence of obligation to make corresponding payment toward the incurred medical expense.

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, 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 June, 2023

\s_____
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 21, 2023.

Dodge County Human Services
Division of Health Care Access and Accountability
[redacted]