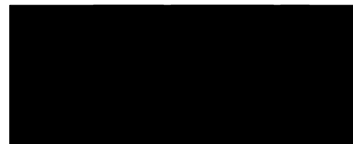




FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of



DECISION
Case #: CWA - 208804

PRELIMINARY RECITALS

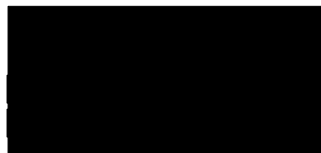
Pursuant to a petition filed on May 27, 2023, under Wis. Admin. Code § HA 3.03, to review a decision by the Burnett County Department of Social Services regarding Medical Assistance (MA), a hearing was held on August 2, 2023, by telephone.

The issue for determination is whether the agency correctly included garnished sums as part of petitioner's available and countable income when calculating his 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: Emily Tribby

Burnett County Department of Social Services
7410 County Road K, #280
Siren, WI 54872

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Polk County.

2. Petitioner applied for long-term care MA on 5/12/23. He asked that this be backdated to February.
3. Petitioner was admitted to [REDACTED] on 4/27/23.
4. The county agency calculated petitioner's monthly patient liability for his nursing home care at \$2,890.30 from his admission date forward.
5. That calculation involved consideration of a consent judgment for \$67,885 against petitioner which is being paid out of his retirement annuity paid by the [REDACTED]. The judgment stems from a tax liability to the U.S. government. Petitioner currently has nearly \$300 garnished from his monthly retirement payment in satisfaction of the tax debt.
6. Petitioner appealed on the basis that the amount he actually receives in income per month is less than his current patient liability.
7. Petitioner currently resides at [REDACTED] nursing home.

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 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>.

Petitioner argued at hearing that he cannot pay the current patient liability because the liability has been determined to be \$2890.30 per month. He argues that he only receives \$2,581.83 per month because nearly \$300 is garnished from each monthly payment. Thus, there is no practical way he can pay the patient liability.

Under the Wisconsin Medicaid program rules garnished sums are to be included in the initial total available income of a member:

General Rules:

1. *Only count income when it is available.*
2. *Some income is disregarded (see [SECTION 15.3 EXEMPT AND DISREGARDED INCOME](#)).*
3. *Always use gross income when calculating income.*
4. ***Some income, even though it is unavailable income, must be counted (e.g., garnishments).***

Income is available if all the following are true:

1. *It is actually available.*
2. *The person has a legal interest in it.*
3. *The person has the legal ability to make it available for support and maintenance.*

Note: Available income can include more than a person actually receives if amounts are withheld from earned or unearned income because of a garnishment or to pay a debt or any other legal obligation

Wisconsin Medicaid Eligibility Handbook at Section 15.1.5 (boldface emphasis added).

Application of these rules results in the current scenario for petitioner as set forth in the note above. While this is unfortunate, I see no way that I can ignore the clear language of this rule provision. It appears to me that the agency correctly determined the patient liability.

While I mentioned at the time of hearing that I could write a proposed decision in this case due to what seemed like an odd result, I had not yet looked at the applicable rule. The rule seems clear and I have no reason to issue this decision as a proposed one seeking clarification from the department.

CONCLUSIONS OF LAW

The county agency correctly included even the garnished sum as available income for petitioner.

THEREFORE, it is **ORDERED**

That this 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).

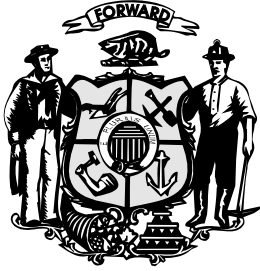
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 8th day of September, 2023



\s

John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705-5400

Telephone: (608) 266-7709
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 8, 2023.

Burnett County Department of Social Services
Bureau of Long-Term Support