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[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FCP - 206604

PRELIMINARY RECITALS

Pursuant to a petition filed on October 17, 2022, under Wis. Admin. Code § DHS 10.55, to review a decision by the Wood County Human Services Department - WI Rapids (“the agency”) regarding Medical Assistance (MA), a hearing was held on November 16, 2022, by telephone.

The issue for determination is whether the agency properly determined that Petitioner, a Family Care Program enrollee, is required to pay a cost share as of September 2022.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Jewel Yanko

Wood County Human Services Department - WI Rapids
111 W Jackson St
Wisconsin Rapids, WI 54495

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is an unmarried resident of Forest County. Petitioner has two adult children.

2. Petitioner has been eligible for Medical Assistance home and community based long term care waiver services (“Community waivers”) since at least June 2019.
3. Petitioner currently receives Community Waiver services through the Family Care Program.
4. Petitioner was eligible for the Medical Assistance Purchase Plan (MAPP) for an unspecified period of time prior to September 2022 and in November 2022. While she was eligible for MAPP, Petitioner had no Community Waivers cost share.
5. From at least September 2022 through November 2022, Petitioner’s gross monthly income was \$3,230.54.
6. As of September 1, 2022, Petitioner’s MAPP test group size changed from two to one which in turn lowered the applicable MAPP income eligibility limit from \$3,814.58 to \$2,831.25. The agency determined that Petitioner’s countable income exceeded that lower income limit and her MAPP case therefore closed from September 1, 2022 through October 31, 2022.
7. When the agency determined that Petitioner was no longer eligible for MAPP, it began to assess Petitioner a Community Waivers cost share.
8. By notice dated July 29, 2022, the agency informed Petitioner that she would need to pay a monthly cost share of \$1,109.19 as of September 2022 to remain eligible for Community Waivers. See Ex. 1.
9. By notice dated September 23, 2022, the agency informed Petitioner that her Community Waivers cost share would be reduced to \$1,066.19 as of October 2022. See Ex. 2.
10. After the agency determined that Petitioner must pay a Community Waivers cost share, it also determined the cost share was a deductible medical expense under MAPP program rules and therefore deducted the cost share amount from Petitioner’s gross income when determining MAPP income eligibility for the month of November 2022 only. See Exs. 5 and 7.
11. By notice dated November 4, 2022, the agency informed Petitioner that from November 1 – 30, 2022, she would again be eligible for MAPP and again have no Community Waivers cost share obligation. See Ex. 3.
12. By letter dated November 7, 2022, the Department of Health Services, Division of Medicaid Services advised Petitioner that it had “determined that a cost-share reduction is appropriate and, beginning with September 2022 and going forward, we will be reducing your cost-share responsibility *by* \$463.” [Emphasis added.] See Ex. 9.
13. By notice dated November 10, 2022, the agency informed Petitioner that her monthly cost share for September and October 2022 had been reduced *to* \$463. See Ex. 10.
14. Petitioner filed an appeal regarding the agency’s finding that she must pay a cost share as of September 2022.

DISCUSSION

Petitioner filed this appeal to seek a further reduction of a Community Waivers cost share that she was assessed as of September 2022. Petitioner expressed confusion and frustration regarding both being assessed a cost share in excess of \$1,000 after having no cost share for years and the slew of seemingly inconsistent notices that she received regarding the exact amount of her cost share. It would be strange if Petitioner hadn’t been confused and frustrated by the complexities of her case. After careful review of the record and for the reasons set forth below, I find that the agency was correct in determining that Petitioner must pay a cost share to maintain her Community Waivers eligibility as of September 2022 (but excluding November 2022). For Petitioner’s benefit, I have endeavored to clarify the steps taken by and the notices issued to Petitioner from July 29, 2022 through November 10, 2022.

The Family Care (FC) program, in which Petitioner is currently enrolled, is one of Wisconsin's approved Medical Assistance home and community based long term care waiver programs. It is designed to provide long-term care services for people with physical and developmental disabilities and for elderly individuals through a managed care service delivery model. See Wis. Stat. §46.286 and Wis. Admin. Code ch. DHS 10. An individual must meet both financial and functional eligibility criteria to receive long term care waiver services, including Family Care.

Recipients of long term care waiver services in Wisconsin are placed into one of three financial eligibility groups: Group A, Group B, or Group B Plus. Medicaid Eligibility Handbook (MEH) §§28.6.2 and 28.6.3, Individuals in Group A are not required to pay a cost share. MEH §28.6.2. Individuals in Groups B and B Plus are required to pay a cost share. MEH §28.6.3 and 28.6.4. Group A members include individuals who are eligible for MAPP as well as individuals eligible for the following full-benefit Medicaid subprograms: Katie Beckett, Institutional Medicaid, BadgerCare Plus, SSI-related Medicaid (categorically or medically needy), Foster Care Medicaid, Adoption Assistance, Medicaid Met Deductibles, Wisconsin Well Woman Medicaid and SSI-Medicaid. MEH §28.6.2 and 21.2.

LOSS OF MAPP ELIGIBILITY and GROUP A STATUS

Petitioner was eligible for MAPP until September 1, 2022 at which time the agency changed her fiscal test group size from two to one. The MAPP fiscal test group of an applicant or recipient includes their spouse and any children under age 18. MEH §26.2.3 The agency representative explained that when Petitioner's test group size was reduced, her countable income exceeded the applicable MAPP income eligibility limit and caused her MAPP to close. Petitioner, who is unmarried and has two adult children, did not dispute the agency's calculation of her income or its finding that she should be evaluated for MAPP eligibility as a one-member test group.

Once Petitioner lost her MAPP eligibility, the agency properly determined that she was no longer eligible for membership in Community Waivers Group A and that it must therefore calculate a cost share for her as of September 1, 2022.

CALCULATION OF STANDARD COST SHARE AMOUNT

The agency determined that Petitioner remained eligible for Community Waivers as of September 1, 2022 as a Group B Plus member. The monthly cost share for Group B and Group B Plus members is calculated by subtracting allowable deductions from an individual's gross income. Allowable deductions include a \$1,021 basic needs allowance, shelter and utility expenses that exceed \$350 per month (referred to as "special housing amount"), health insurance premiums, and certain out of pocket medical/remedial expenses. Parents of minor children who live in their home may also be allowed a deduction under certain circumstances. See 42 C.F.R. §435.726; Wis. Admin. Code §DHS 10.34(2) and DHS §103.07(1)(d); MEH §28.6.4, et. seq.

SEPTEMBER 2022 AND OCTOBER 2022

The testimony offered by the agency's representative in combination with a copy of a budget screen from October 2022 (Exhibit 6) and CARES case comments (Exhibit 4) showed what expenses and deductions the agency applied in calculating Petitioner's September 2022 and October 2022 cost shares. The expenses considered by the agency in those two months were identical with one exception: a \$43 trash collection expense was added in October 2022 after Petitioner reported it to the agency on September 22, 2022. The other expenses were as follows:

- \$74.08 homeowner's insurance
- \$650 mortgage
- \$186.17 property taxes
- \$150 electric
- \$220 natural gas
- \$170.10 Medicare Part B premium
- \$1,021 basic needs allowance

In October 2022, the agency thus determined that Petitioner was eligible for the following deductions: shelter expense deduction of \$973.25 (all shelter expenses minus \$350) in addition to the basic needs allowance and deduction for her Part B premium. The agency then subtracted those deductible expenses from her gross income (i.e., Social Security gross + disability payment) and determined that her cost share was \$1,066.19. (See Exhibit 6). In September 2022, the agency calculated her cost share to be \$43 higher (i.e., \$1,109.19) because Petitioner did not report her trash expense to the agency until September 22, 2022. (See Exhibit 4; case note dated 9/22/22). *This resulted in the About Your Benefits notices that were issued to Petitioner on July 29, 2022 and September 23, 2022 respectively.*

Petitioner did not assert that the agency made any errors in using the above figures. Rather, she argued that she has more expenses than those contemplated by the Community Waivers cost share calculation (e.g., telephone, assisting her two adult children with college expenses, home repairs). While home repairs and a telephone are undeniably basic and necessary expenses (as are food and toiletries) and although Petitioner's desire to financially assist her college-aged children is understandable, neither applicable law nor policy allows specific deductions for any of those expenses. I note that the cost share formula does however include a "basic needs allowance" which is intended to allow a recipient to meet basic and necessary expenses. In 2022, the basic needs allowance was \$1,021. Neither the agency nor the Division of Hearings and Appeals has the discretion to alter the cost share formula or to add categories of deductions.

Although the cost share formula cannot be altered by the local agency, the Department of Health Services may waive or reduce an individual's cost share if the Department determines that the cost share would impose undue financial hardship. Wis. Admin. Code §10.34(4)(b). Accordingly, Petitioner filed a request for a reduction of her cost share obligation. On November 7, 2022, the Department of Health Services determined that Petitioner's income was "insufficient to cover [both] monthly necessary living expenses and [the] cost share obligation" that the agency had calculated. The Department thus ordered Petitioner's cost share to be reduced by \$463 as of September 1, 2022 and going forward. The local agency misinterpreted the Department's directive and reduced Petitioner's cost share to \$463 for the months of September and October 2022. *This resulted in the About Your Benefits notice that was issued to Petitioner on November 10, 2022.*

At hearing, the agency representative stated that in light of the agency's error, the agency would not seek to retroactively increase Petitioner's cost share for September 2022 and October 2022 but it is anticipated that the agency will adjust her cost share as of December 2022.

NOVEMBER 2022

On November 4, 2022, the local agency determined that Petitioner was eligible for no cost share for the month of November 2022 only. The agency representative explained that the \$1,066.19 cost share initially assessed for the month of October 2022 was counted as a medical expense when evaluating Petitioner for MAPP eligibility for the month of November 2022. MAPP program rules allow medical expenses to be used as a deduction when calculating an individual's countable income and the agency considered the cost share as a medical expense. See MEH §26.4.2 Para. 8 and §26.4.2.1. As a result,

Petitioner's countable income fell under the MAPP income eligibility limit in November 2022 which in turn made her once again eligible for Community Waivers as a Group A member in November 2022. She thus had no cost share for the month of November 2022. *This resulted in the About Your Benefits notice issued to Petitioner on November 4, 2022.*

The agency's action was consistent with the following example included in the *Medicaid Eligibility Handbook*:

Mary applies for MAPP. She verifies \$600 in monthly out-of-pocket medical and remedial expenses, which brings her under the 250 percent of FPL income limit for MAPP. It is possible that these expenses might be covered by MAPP once Mary is eligible, but the IM worker correctly processes the application using these verified out-of-pocket expenses. One month later, Mary realizes that MAPP is now paying for \$500 of these medical and remedial expenses. Mary is required to report this change in expense within 10 days. She reports that her medical expenses have dropped to \$100. The IM worker enters this change, and Mary is no longer financially eligible for MAPP because the decrease in her out-of-pocket medical and remedial expenses increases her countable income. If Mary applied again using the same expenses, the IM agency would not allow the expenses because they are now known to be covered by Medicaid.

MEH 26.4.2.1, Example 8. The agency's decision to not assess Petitioner a cost share in November 2022 was therefore appropriate.

DECEMBER 2022 AND FORWARD

There are no decisions in the record regarding the agency's assessment of a December 2022 cost share and I therefore cannot review whether the agency correctly calculated her cost share for that or any later month. However, I anticipate that the agency will begin assessing a cost share again as of December 2022. If the agency does so, it must reduce the standard cost share by \$463, consistent with the Department's November 7, 2022 response to Petitioner's request for a cost share reduction.

CONCLUSIONS OF LAW

- Because Petitioner was not eligible for MAPP or any other full-benefit Medicaid program in September 2022 or October 2022, she was not eligible for Community Waivers as a Group A member.
- Because Petitioner remained eligible for Community Waivers as a Group B Plus member in September 2022 and October 2022, the local agency properly assessed a monthly cost share for those two months.
- When calculating Petitioner's September 2022 and October 2022 cost shares, the local agency deducted all allowable expenses.
- **Petitioner's monthly cost share for September 2022 and October 2022 is \$463.**
- Because Petitioner was eligible for MAPP for the month of November 2022, she was eligible for Community Waivers as a Group A member and therefore **has no cost share obligation for November 2022.**
- For any month that Petitioner is assessed a cost share by the local agency, the agency must first apply all deductions allowed by the applicable policy (i.e., *MEH* §28.6.4 et. seq.) and then subtract an additional \$463, consistent with the Department's November 7, 2022 letter.

THEREFORE, it is

ORDERED

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

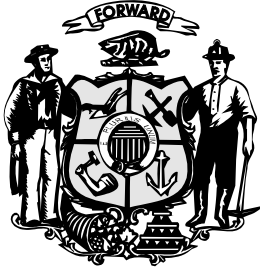
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 5th day of January, 2023



\s _____
Teresa A. Perez
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 January 5, 2023.

Wood County Human Services - WI Rapids
Office of Family Care Expansion
Health Care Access and Accountability