



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MGE - 209688

PRELIMINARY RECITALS

Pursuant to a petition filed on August 5, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane Cty. Dept. of Human Services regarding Medical Assistance (MA), a hearing was held on September 13, 2023, by telephone.

The issue for determination is whether the agency correctly determined petitioner's cost share for Medical Assistance.

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: Mai Lee Xiong
Dane Cty. Dept. of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is an adult resident of Dane County.
2. Petitioner is disabled and is not employed.

3. On June 20, 2023, petitioner completed a Medicaid renewal application by telephone.
4. On June 29, 2023, the agency received timely verification of petitioner's pension income and on July 17, 2023 the agency received verification of his bank account value.
5. Based on verified pension and Social Security income information, the agency determined that petitioner's monthly income effective August 1, 2023 is \$7,273.44 per month.
6. On July 18, 2023, the agency issued to petitioner an About Your Benefits notice informing him that effective August 1, 2023 he was enrolled in the Medicaid Community Waivers program with a cost share liability of \$3,747.89 per month.

DISCUSSION

The IRIS 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 IRIS.

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. Based upon his income, the agency determined that petitioner remained eligible for Community Waivers as of January 1, 2023 as a Group B Plus member.

The cost share amount is the monthly amount Group B and B Plus members must pay toward the cost of their waiver services. The cost share amount is calculated in CARES by applying the cost share deductions to Group B and B Plus members' gross income. For former SSI members who are not eligible for Special Status Medicaid (Section 25.0 Special Status Medicaid Introduction) special status disregards are not used in the Cost Share calculation. Members who owe a cost share must pay one in the month that they enroll in a community waiver program, even if they only receive services for part of a month. MEH 28.6.4.

The monthly cost share for Group B Plus members is calculated by subtracting allowable deductions from an individual's gross income. Allowable deductions include a 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. 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.

The testimony offered by the agency's representative in combination with a copy of the August 2023 community waivers budget screen for August 2023 showed petitioner's gross income and the expenses and deductions the agency applied in calculating petitioner's August 2023 cost share. Regarding income, the agency counted pension income in the amount of \$4,172.44 per month and Social Security Disability Income in the amount of \$3,101 per month. The agency is required to count gross, not net, income in all cases. The agency correctly determined that petitioner's gross monthly income is \$7,273.44.

Petitioner's monthly cost share was determined by subtracting his personal maintenance allowance (\$2,683.08), health insurance premium (\$52.47) and medical expenses (\$790) from his gross income,

leaving \$3,747.89. The agency representative testified that more detailed information about how petitioner's medical expense amount was unavailable to her because the total was submitted by the IRIS agency and accepted as accurate. This record contains no evidence to show that the IRIS-calculated medical/remedial expense used for this budget was incorrect. There is also no evidence that any other aspect of the August 2023 community waivers budget was incorrect. Based on this record, I find that petitioner's cost share was calculated correctly.

Petitioner did not assert that the agency made any errors in using the above figures. Rather he testified that the cost share amount was higher than expected, higher than it was previously, unfairly high and unaffordable. He also offered a list of expenses he has that were not counted as deductions, including solar panels for his house, wheelchair tires and batteries, and a lift system and gas for his truck. While these may be actual expenses and even necessary expenses, neither applicable law nor policy allows specific deductions for any of those expenses. Petitioner requested that his costs of personal care, estimated at \$5,000 per month, be deducted from his cost share pursuant to Sec. 1619(b) of the federal Social Security Act. Petitioner testified and wrote in submitted documentary evidence that he receives an IRIS grant in the amount of approximately \$5,000 per month to cover personal care. It is not clear whether he has \$5,000 per month of medical expenses in addition to that and, if so, why IRIS did not report those expenses to the county agency. Next, Section 1619(b) of the federal Social Security Act does not govern the cost share determination for the Medicaid community waivers in which petitioner is enrolled. Sec. 1619(b) applies to people with severe impairments who work. Petitioner indicated that he retired in 2020 and no longer works. He is not enrolled in 1619(b) Medicaid. Also, petitioner objected to certain aspects of the MAPP (Medicaid Purchase Plan) program which were not relevant because petitioner is not enrolled in that program.

I lack any jurisdiction to alter petitioner's cost share based upon hardship or equity arguments. I also have no authority to impose what petitioner calls a "reasonable accommodation" to calculate his cost share differently than for other Wisconsin community waivers Medicaid recipients and contrary to the law and rules governing the program he is enrolled in. It is the long-standing policy of the Division of Hearings & Appeals that the Department's assigned administrative law judges do not possess equitable powers and cannot base a ruling upon an idea of what is deemed fair. 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. Under law, petitioner's cost share was calculated correctly; no exception applies, and I am without any equitable powers to direct any remedy beyond the remedies available under law.

Although the cost share formula cannot be altered by the county 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). Petitioner has not requested such a waiver or reduction based on financial hardship and may do so.

CONCLUSIONS OF LAW

The agency correctly determined petitioner's eligibility for the IRIS community waivers program, including his cost share obligation, effective August 1, 2023.

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).

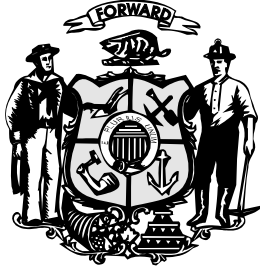
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 19th day of October, 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 October 19, 2023.

Dane Cty. Dept. of Human Services
Division of Health Care Access and Accountability