



STATE OF WISCONSIN

In the Matter of

(petitioner)

DECISION

MED-53/97033

PRELIMINARY RECITALS

Pursuant to a petition filed August 8, 2008, under Wis. Stat. § 49.45(5) (2005-06), to review a decision by the Rock County Department of Social Services (County) in regard to Medical Assistance (MA), a Hearing was held on September 22, 2008 in Janesville, Wisconsin.

The issue for determination is whether petitioner's patient liability, starting April 1, 2008, under MA for an institutional person was properly calculated.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:	Represented by:
(petitioner) (not present at September 22, 2008 Hearing)	(redacted)

Wisconsin Department of Health Services
Room 650
1 West Wilson Street
P.O. Box 7850
Madison, Wisconsin 53707-7850

BY: Sherry L. Quirk, ES Supervisor
Linda Romps, ESS
Rock County Department Of Social Services
1900 Center Street
P.O. Box 1649
Janesville, Wisconsin 54546

OTHER PERSONS PRESENT:
(redacted), petitioner's nephew

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # xxxxxxxxxxx) is a resident of Rock County, Wisconsin and is an institutionalized MA recipient; he is not employed.
2. At all times relevant to this matter petitioner was not expected to return home within 12 months -- but a physician had verified that there is a realistic expectation that petitioner will eventually return home.
3. Petitioner applied for institutional MA on May 27, 2008 and requested that eligibility be backdated to April 1, 2008; when computing petitioner's monthly patient liability amount the County calculated petitioner's monthly income by adding together 2 Social Security checks per month (\$1,167.00 + \$994.00) and a pension of \$148.31 per month for a total monthly income of \$2,309.31; the County allowed a monthly home maintenance deduction of \$280.09 (\$44.25 monthly homeowner's insurance; \$76.02 monthly property taxes; and, \$159.82 monthly utility expense) but no other deductions except for the \$45.00 per month personal needs allowance.
4. Petitioner's income consists of 1 Social Security check per month in the amount of \$1,167.00 and 1 pension check per month in the amount of \$148.31 for a total monthly income of \$1,315.31.

DISCUSSION

The law is clear that, with only certain very limited deductions, all of the income of an MA recipient who is in an institution must be applied to the cost of the institution. Wis. Stat. § 49.45(7)(a) (2005-06); Wis. Admin. Code § 103.07(1)(d) (February 2002); *Medicaid Eligibility Handbook* ["MEH"] 27.7. The amount that the recipient is required to pay for the cost of the institution is known as the "patient liability amount" or "cost of care". MEH 27.7.1.

The amount of the patient liability depends on the recipient's income, less certain deductions. For purposes of computing the patient liability amount the only allowed deductions are the following: personal needs allowance; if employed, the first \$65 and one-half the remainder of gross earnings; the cost of health insurance; amounts incurred for necessary medical or remedial care recognized under state law but not covered by MA; the actual amount (subject to a maximum) paid for the support of a person for whom the institutionalized person is legally responsible; expenses for establishing and maintaining a court-ordered guardianship or protective placement, including court-ordered attorney and/or guardian fees; and, the monthly cost of maintaining a home [but only up to a certain maximum amount and only if one of the following is true: (1) the person intends to return home and the anticipated absence from the home, as verified by a physician, is less than 12 months; or, (2) a physician has verified that there is a realistic expectation the recipient will return home]. Wis. Admin. Code §§ HFS 103.07(1)(d) & 103.06(1)(b)2. & 3. (February 2002); But see also, MEH 27.7.1. & 15.7.1.

First, as noted in the above Findings of Fact, petitioner's income consists of 1 Social Security check per month in the amount of \$1,167.00 and 1 pension check per month in the amount of \$148.31 for a total monthly income of \$1,315.31. This is based on the testimony, which is credible, of petitioner's representative and nephew and also on bank statements showing 1 deposit per month from the US Treasury in the amount of \$1,167.00. The County's contention that petitioner receives 2 Social Security checks per month is not supported by the preponderance of the credible evidence in the record of this matter. See, Wis. Admin. Code § HA 3.09(4) (September 2001).

Second, petitioner argues that expenses such as telephone, life insurance, \$100 per month paid to his sister-in-law for the service of paying his bills, cable television, home care, food, etc. should be deducted from his income when calculating his cost of care. As detailed above, the law does not allow these expenses to be deducted. Therefore, they cannot be deducted.

Third, petitioner's representative testified that she had no way of knowing what expenses were deductible and what expenses were not and was not told until May 27, 2008. She argues that, therefore, petitioner should be able to deduct all of his expenses for April 2008 and May 2008. However, petitioner did not even apply for institutional MA until May 27, 2008. Furthermore, although the County may assist petitioner, petitioner and his representative are ultimately responsible to know the rules governing MA and to make appropriate choices accordingly. Therefore, this argument must fail.

Finally, the County erred in allowing a monthly home maintenance deduction of \$280.09. At the Hearing the County worker testified that a home maintenance deduction should not have been allowed because petitioner would not be returning home for 6-months or more. Written state policy, as found in the Medicaid Eligibility Handbook, states that a home maintenance deduction may be allowed "only when the following conditions are met:

1. A physician certifies (verbally or in writing) that the person is likely to return to the home or apartment within six months . . . " MEH 27.7.1.e & 15.7.1.

This provision of the Handbook is consistent with federal regulations, which permit the home maintenance deduction only if the amount is deducted for not more than a six month period and the person is likely to return home during that period. See 42 CFR 435.725(d). This federal regulation supercedes the outdated administrative code provision relied on by the Administrative Law Judge.

CONCLUSIONS OF LAW

For the reasons explained above, petitioner's patient liability, starting April 1, 2008, under MA for an institutional person was not properly calculated because incorrect income was used and because the monthly home maintenance deduction was erroneously applied.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to the County and that, within 10 days of the date of the Final Decision in this matter, the County recalculate petitioner's patient liability retroactive to April 1, 2008 using monthly income of \$1,315.31 and then issue all MA benefits for which petitioner is otherwise eligible retroactive to April 1, 2008. In all other respects it is Ordered that the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named as "PARTIES IN INTEREST" in the proposed decision. Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than 20 days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in Wisconsin Statutes § 227.49. A copy of the statutes can be found 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 no more than 30 days after the date of this hearing decision (or 30 days after a denial of a rehearing, if you ask for one).

For purposes of appeal to Circuit Court, the Respondent in this matter is the Department of Health Services. Appeals must be served on the Office of the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 650, P.O. Box 7850, Madison, WI 53707-7850.

The appeal must also be served on the other 'PARTIES IN INTEREST' named in the proposed decision. The process for Circuit Court is in Wisconsin Statutes §§ 227.52 and 227.53.

Given under my hand at the City of
Madison, Wisconsin, this
__8TH__ day of
_DECEMBER_____, 2008.

S/MARK THOMAS
Mark Thomas, Deputy Secretary
Department of Health Services