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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MGE - 214684

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 21, 2024, under Wis. Stat., §49.45(5), to review a decision by the La Crosse County Dept. of Human Services regarding Medical Assistance (MA), a hearing was held on December 4, 2024, by telephone. Hearings set for October 9 and November 6, 2024 were rescheduled at the petitioner's request. The record was held open 21 days to allow petitioner to submit a written argument that was received December 23, 2024.

The issue for determination is whether the agency correctly budgeted income from royalty payments in determining petitioner's monthly cost of care.

**PARTIES IN INTEREST:**

**Petitioner:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner's Representative:**

Atty. Peter E. Grosskopf  
Grosskopf & Burch Law Firm  
1324 W Clairemont Ave Ste 10  
Eau Claire, WI 54701

**Respondent:**

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

By: Dana Lee

La Crosse County Dept. of Human Services  
PO Box 4002  
La Crosse, WI 54601

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

## **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Jackson County. La Crosse County DHS is the lead county for the Western Region for Economic Assistance, which includes Jackson County.
2. Petitioner has resided in a nursing home and been eligible for long-term care MA for several years. Her current income is from social security and royalties from gas/mineral rights.
3. The royalty income has been treated as self-employment by the agency, meaning that it would take petitioner's Schedule E net income and divide by twelve to determine monthly income. The monthly income, added to petitioner's social security (and rental income that no longer exists), was used to determine petitioner's monthly cost of care under for MA eligibility.
4. In January, 2024, petitioner's daughter, who is her power-of-attorney, complained to the agency that petitioner could not pay her cost of care. The agency responded by having her complete a self-employment income report for the royalties from October, 2023 through February, 2024, which averaged \$1,284.27. See Exhibit 9 for the report. That amount was added to monthly social security and rent, and monthly cost of care was determined to be \$2,861.53 beginning April 1, 2024. Petitioner's daughter appealed, case no. MGE-212097. In a decision dated May 6, 2024, the Division of Hearings and Appeals upheld the agency's cost of care calculation. Petitioner did not appeal.
5. An eligibility renewal was submitted on July 18, 2024. With the renewal petitioner's 2023 tax return was submitted. It showed no rental income, so rental income was removed from the calculation. Royalty income was set at \$1,284.27 per month based on the five-month average done earlier in 2024. Social security was verified to be \$1,043 per month. Based on those amounts, petitioner's monthly cost of care was set at \$2,272.27, with petitioner being notified by a notice dated August 14, 2024.
6. Petitioner's 2023 Schedule E net royalty income was \$15,595, which averages \$1,299.53 monthly; the agency thus is budgeting \$15.26 less per month for royalty income than the amount that would be budgeted using the Schedule E net income.
7. Petitioner filed this appeal on August 21, 2024, again complaining that the monthly cost of care was too high.

## **DISCUSSION**

Institutionalized MA recipients must apply all available income toward their cost of care. Wis. Admin. Code, §DHS 103.07(1)(d); MA Handbook, Appendix 27.7. Cost of care is determined by taking gross income, allowing certain specified deductions, and applying the remainder to the monthly nursing home expense. "Available income" as defined in the Wisconsin Administrative Code is all income minus the following deductions: a \$45 personal needs allowance, an earned income deduction, health insurance premiums, medical expenses not covered by MA, support for persons for whom the recipient is responsible, and monthly home maintenance. Id.

Royalties are treated as self-employment, except that they are not considered to be earned income subject to the earned income deduction. MA Handbook, App. 15.6.4. Self-employment is determined by using the net income from the prior year's tax return and dividing by twelve to get a monthly amount. MA

Handbook, App. 15.6.5.1 and 15.6.5. If past circumstances do not represent present ones, income can be calculated using anticipated earnings. MA Handbook, App. 15.6.5.3.

The issue in this case is a not a new one. It was addressed and ruled on in Appeal no. MGE-212097. That decision follows the policy described above, and I see no reason to contradict it.

Petitioner's primary argument is that the royalty checks fluctuate, and in months when the checks are lower, she cannot pay the full cost of care. Secondly, with taxes taken out, the royalty checks are always going to be less than the amount budgeted. The first argument fails because the lower royalty payments would be offset by the higher royalty payments. Any underpaid cost of care in a low royalty payment month can be made up in the months when the royalty payments are higher than the budgeted amount. With regard to the tax issue, all MA participants have the same issue in that the program uses gross income to determine eligibility and cost of care. The average is taken from the Schedule E is the net income. If taxes were overpaid, petitioner will get a tax refund that can be used to make up any cost of care deficits.

Petitioner seems to be suggesting that the agency recalculate the cost of care monthly due to the fluctuating income. The system simply is not set up to do such a methodical calculation.

I note that petitioner has not claimed a change of circumstances that would trigger use of anticipated income. The royalty fluctuations are part of the regular course of business. No precipitous decrease in royalties has been reported.

Petitioner complains that the amount owed to the nursing home is some \$27,000. If that amount built up over the past years, it is an issue between the family and the nursing home. I am addressing only the events surrounding the August, 2024 appeal, and I note that no appeals were filed in the years prior to case no. MGE-212097.

All that said, I can provide some relief to petitioner. The prior decision in case no. MGE-212097 noted that petitioner's daughter reported at the April 4, 2024 hearing that petitioner no longer received rental payments. The judge in that case noted she had not reported the end of the rental income prior to the hearing, and he noted the policy that reported changes become effective the month after the report. MA Handbook, App. 27.10. It is evident, however, that the agency did not remove the rental income until determining the September, 2024 cost of care. See Agency Exhibit 1, Case Comment dated 08/08/2024. I note that the July 10, 2024 About Your Benefits Notice shows \$1,757.52 as self-employment income, while the August 14 notice shows self-employment income to be \$1,284.27. Agency Exhibits 4 and 3, respectively. The difference is the removal of the \$473.25 rental income.

Because petitioner's daughter reported the end of the rental income on April 4, I conclude that it should have been removed effective May 1 (it could be argued that the end of the rental was not verified until August, but there is no record of a request for verification before August). That means that petitioner's monthly cost of care should be set at \$2,272.27 for the months of May, June, July and August, 2024, as there were no other changes.

### **CONCLUSIONS OF LAW**

1. The monthly amount of fluctuating royalty income is determined by taking an average the prior year's income; here the agency used only five months' income and determined an average that was lower than using the entire 2023 net income.
2. Petitioner monthly cost of care should have been reduced to \$2,272.27 effective May 1, 2024 because the end of monthly rental income was reported in April, 2024.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with instructions to change petitioner's monthly cost of care for the months of May, June, July, and August to \$2,272.27, within 10 days of this decision. In all other respects 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, 5<sup>th</sup> 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.

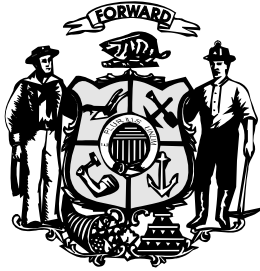
**APPEAL TO COURT**

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 2nd day of January, 2025

\s \_\_\_\_\_  
Brian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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

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

The preceding decision was sent to the following parties on January 2, 2025.

La Crosse County Department of Human Services  
Division of Health Care Access and Accountability  
Attorney Peter Grosskopf