



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

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In the Matter of

(petitioner)

DECISION

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FCP-40/59236

**PRELIMINARY RECITALS**

Pursuant to a petition filed August 7, 2003, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Office of Strategic Finance (OSF) in regard to Family Care Program, a hearing was held on January 22, 2004, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner's cost share has been properly determined.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services  
Office of Strategic Finance  
P. O. Box 1379  
Madison WI 53707-1379

By: David Wilson  
Milwaukee County Dept. of Aging  
235 W. Galena St.  
Milwaukee WI 53212-3948

**ADMINISTRATIVE LAW JUDGE:**

Louis H. Dunlap  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Milwaukee County who has been enrolled in the Family Care Plan for some time.
2. Petitioner entered a nursing home for two weeks of respite care in April, 2003.
2. After leaving the nursing home, petitioner was notified that her cost share for the months of June, July and August would be \$775. She paid this amount once during this time.
4. Petitioner's only income is Social Security of \$820 per month.

## DISCUSSION

There actually is no issue for determination here.

The Family Care program, which is supervised by the Department of Health and Family Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter HFS 10.

In this case, the petitioner has been found eligible for FC. An eligible person's income is reviewed to determine if the recipient has enough income to be responsible for payment of a monthly "cost share." *Medicaid Eligibility Management Handbook (MEMH)*, Appendices 32.3.0, 25.5.0, 25.9.3. There is no dispute that the petitioner's income levels at all times relevant herein have caused her to be subject to a cost share liability. Also, it is clear that a recipient may request a hearing on the determination of the cost share amount. Wis. Stat. §46.287(2)(a)1b.

What seems to have happened is that petitioner's cost share was determined to be the Medicaid nursing home payment amount rather than the FCP amount. After August, 2003 her cost share returned to approximately the level it had been prior to June, i. e. \$88.00 per month. The county agency agreed that the amount for the months of June, July and August must be re-determined, which will mandate a refund of part of the erroneous \$775 that petitioner paid.

## CONCLUSIONS OF LAW

Petitioner's cost share was incorrectly determined for the three months at issue.

**NOW, THEREFORE, it is**

**ORDERED**

That the matter is remanded to the Milwaukee County Department on Aging with instructions to re-determine petitioner's cost share amount for the months of June, July and August, 2003 and take the administrative steps necessary to refund the amount of \$775 minus the correct cost share amounts for the three months within 10 days of the date of this decision.

## **REQUEST FOR A NEW HEARING**

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 new hearing. You may also ask for a new hearing 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 in this decision as "PARTIES IN INTEREST."

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 twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can 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 thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Family Care Program must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this 28th day of  
January, 2004

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/s/Louis H. Dunlap  
Administrative Law Judge  
Division of Hearings and Appeals  
427/LHD