



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

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In the Matter of

(petitioner)

DECISION

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FCP-40/63222

**PRELIMINARY RECITALS**

Pursuant to a petition filed May 10, 2004, 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 Medical Assistance (MA) Family Care Program, a telephonic hearing was held on July 14, 2004, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal of the December 8, 2003 notice indicating her Family Care cost share amount is timely.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:  
(petitioner)

Representative:  
None

Wisconsin Department of Workforce Development  
Bureau of Workforce Programs  
201 East Washington Avenue  
P.O. Box 7935  
Madison, WI 53707-7935

By: Karla Fajembola, ES supervisor  
Milwaukee County DHSS  
235 West Galena, 4<sup>th</sup> Floor  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a 76-year-old resident of Milwaukee County who receives MA Family Care benefits. See Exhibit 2.
2. The county agency sent a December 8, 2003 Notice of Decision to the petitioner stating that her MA Family Cost share would be \$553.61 effective January 1, 2004 based upon petitioner's October, 2003 MA annual review. See Exhibit 1
3. The petitioner received Exhibit 1.
4. The petitioner did not file any appeal with the Division of Hearings and Appeals (DHA) regarding the calculation of her Family Care cost share until May 10, 2004.

### DISCUSSION

An administrative law judge or hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA or BadgerCare must be filed within 45 days of the date of the action. Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., §273.15(g). A negative action can be the denial of an application, reduction, incorrect effective date of eligibility for benefits, **the incorrect calculation of benefits or payments**, termination of an ongoing case, or an overpayment notice. In this case, the negative action was the calculation of petitioner's Family Care cost share to be \$553.61 effective January 1, 2004.

During the July 14, 2004 hearing, the petitioner admitted that she had received the December 8, 2003 notice (Exhibit 1), which stated that her Family Care cost share would be \$553.61 effective January 1, 2004. When asked by this ALJ why she waited until May 10, 2004 to file an appeal before the Division of Hearings and Appeals (DHA), she explained that both she and Senior Care were discussing with the county ESS workers the calculation of her Family Care cost share amount. However, there is no evidence in the record that any county worker told the petitioner not to file for an appeal of her cost share calculation with DHA. As a result, it was petitioner's decision to wait about four months (until May 10, 2004) to request a hearing before the Division of Hearings and Appeals regarding the calculation of her cost share as of January 1, 2004. While petitioner may have felt somewhat confused about what to do, that confusion does not establish any exception whereby the 45-day deadline does not apply. During the hearing, petitioner explained that she felt the amount of her cost share was "unfair". However, such allegation of unfairness also is not any exception whereby the 45-day deadline does not apply.

The petitioner's appeal was filed significantly more than 45 days after the January 1, 2004 setting of her Family Care cost share to be \$553.61 effective January 1, 2004. Accordingly, I conclude that because petitioner did not appeal her Family Care cost share amount within the 45-day time limit, the Division of Hearings and Appeals has no jurisdiction in this case.

As dicta, even if there had been subject matter jurisdiction in this case, the county agency testimony at the hearing regarding petitioner's income from her pension and Social Security indicated that the county agency had correctly calculated her Family Care cost share as of January 1, 2004.

## **CONCLUSIONS OF LAW**

There is no jurisdiction regarding the calculation of petitioner's Family Care cost share effective January 1, 2004, as the appeal is untimely.

**NOW, THEREFORE, it is** **ORDERED**

The petition for review herein be and the same is hereby dismissed.

### **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 15th day of  
July, 2004

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/sGary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals  
428/GMW

cc: Ann Blewett - Milw. Cty - e-mail  
Nora Gomez - Milw. Co. - e-mail  
Lois Greene For Jackson -Milw. Cty - e-mail  
Jenifer Harrison-Metastar - e-mail  
Ruby Email Jackson - e-mail  
Charles Jones, OSF/CSDS - e-mail  
Chester Kuzminski - Dept On Aging - e-mail  
Cheryl McIlquham - BHCE  
Ann Marie Ott - DHFS - e-mail  
Felice RILEY - MILW CTY  
Rob ROHDE-DHFS/METASTAR - e-mail  
Teresa Smith - MILW. CO. - e-mail  
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