



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MGE - 203630

PRELIMINARY RECITALS

Pursuant to a petition filed on November 5, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on November 30, 2021, by telephone.

The issue for determination is whether the agency correctly determined petitioner's MA copay limit.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: [Redacted]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County and receives MA.
2. Petitioner's monthly unearned income is \$1,022.00.

3. On October 4, 2021, the agency sent petitioner a notice advising that his MA copay limit was \$26.00.

DISCUSSION

Federal requirements do not permit states to charge MA recipients more than five percent of their monthly income for out-of-pocket health care cost sharing expenses, defined as copays and premiums. See 42 CFR §447.56. States are required to have a system in place to guarantee that no member will have premium and copay expenses greater than five percent of their income. States are also required to notify members of the amount of their monthly cost share limit, inform members of their right to appeal if they disagree with the amount of the limit, and notify members and inform health care providers when the cost share limit has been reached for a given month, to prevent members from incurring cost sharing expenses that exceed the limit. See DMS Operations Memo 20-09, available online at <https://www.dhs.wisconsin.gov/dms/memos/ops/20-09.pdf>.

Effective July 2020, Wisconsin implemented an automated process to track and enforce the five percent cost share limit as it relates to health care premiums and copays. Cost sharing limits are based on the household's income. A member's premium obligation will be subtracted from their copay limit to ensure that the member's total premiums and copay expenses do not exceed the five percent limit. Id.

For individuals, whose monthly household income is between 50-100% of the federal poverty level, the copay limit is \$26/month. The 100% federal poverty level for a household of one is \$1,073.33/month. See Medicaid Eligibility Handbook, §39.5, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>). 50% of this is \$536.67. The petitioner's \$1,022.00/month gross income puts him in the 50-100% of federal poverty level category.

Here, the petitioner's guardian appealed because petitioner has limited means, with gross income of \$1,022.00, and regular monthly expenses for rent and board of \$935.00. In general, he asserts that the copays would be a financial hardship, and he seeks to have the administrative law judge waive the co-pay requirement. Of note, the \$26 is not what petitioner must pay monthly. The \$26 is the maximum monthly copay he would be charged if he incurs one, or several, through his MA coverage. I reviewed the relevant memo and EBD Medical Assistance Handbook provisions cited above, and I find no exception relevant to this claim for financial hardship. See, 42 C.F.R. § 447.56; and see, Wis. Stat. § 49.45(18)(c); see also, EBD Medical Assistance Handbook, § 21.5.

Furthermore, it is the long-standing position of the Division of Hearings & Appeals that the Division's administrative law judges lack the authority to render a decision on equitable arguments. 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. Here, petitioner's income requires that he must pay co-pays, but that co-pay is capped at \$26 per month as a maximum. I have no authority to disturb that requirement.

CONCLUSIONS OF LAW

The agency correctly determined petitioner's MA copay limit.

THEREFORE, it is

ORDERED

That petitioner's appeal 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).

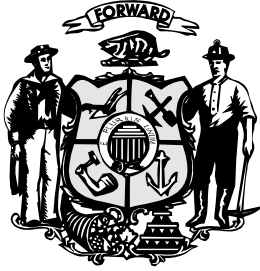
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 3rd day of December, 2021



\s

Jason M. Grace
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 December 3, 2021.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability