

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 16, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1314

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

WILLIAM N. LEDFORD,

PLAINTIFF-APPELLANT,

v.

**WISCONSIN DEPARTMENT OF CORRECTIONS, BUREAU OF
CORRECTIONAL HEALTH SERVICES, AND AVE M. BIE,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
P. CHARLES JONES, Judge. *Affirmed.*

Before Eich, Vergeront and Roggensack, JJ

¶1 PER CURIAM. William Ledford appeals from an order in this declaratory judgment action. The issues relate to the assessment and collection of a health care co-payment from prison inmates who request health services. We affirm.

¶2 Ledford filed an action in circuit court for a declaratory judgment blocking the defendants from assessing a health care co-payment charge against him. The trial court rejected Ledford’s interpretation of the relevant statute and rules, and Ledford appeals.

¶3 The issues arise under WIS. STAT. § 302.386(3) and (4) (1997-98)¹ and WIS. ADMIN. CODE ch. DOC 316, as questions of law. See *Pulsfus Poultry Farms, Inc. v. Town of Leeds*, 149 Wis. 2d 797, 803, 440 N.W.2d 329 (1989). The first dispute is whether assessment of the co-payment is limited to inmates who are earning wages at the time they receive services, or whether it also includes inmates who earn wages at any time while they are residents. The statute and the introductory part of the rules, WIS. ADMIN. CODE § DOC 316.01, refer to inmates “who earn wages during residency.” However, the remainder of the rules, which contain the substantive provisions for the co-payment, refers only to an inmate “who earns wages.” In other words, the additional phrase “during residency” does not appear in the substantive rules.

¶4 Ledford argues that the substantive rules, which use the shorter phrase, must be read as applying only to inmates who are currently earning wages at the time they receive the health care service. The defendants respond that the statute and rules apply to inmates who earn wages at any time during their residency, regardless of whether the wages are earned before, during, or after the health care service.

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶5 To resolve this dispute, we turn first to the language in the statute, because the department’s rule cannot lawfully exceed the scope of the authority granted by the statute. See *Oneida County v. Converse*, 180 Wis. 2d 120, 125, 508 N.W.2d 416 (1993). If the statute is unambiguous, the rule must be consistent with it. *Id.* If the statute is ambiguous, we uphold the agency’s rule if it is a reasonable interpretation of the statute. See *MCI Telecomm. Corp. v. State*, 203 Wis. 2d 392, 402-03, 553 N.W.2d 284 (Ct. App. 1996). We also uphold an agency’s interpretation of its own rule if it is reasonable. See *Franklin v. Housing Authority*, 155 Wis. 2d 419, 426, 455 N.W.2d 668 (Ct. App. 1990).

¶6 The statute states that the co-payment shall be assessed against an inmate “who earns wages during residency” and who requests medical services. See WIS. STAT. § 302.386(3)(a) and (3)(b). The department interprets the phrase “during residency” as clarifying that the co-payment must be assessed if wages are earned at any time during residency. We conclude the department’s interpretation is reasonable. The phrase “during residency” can reasonably be read as broadening or clarifying the time period during which the wages must be earned.

¶7 We next turn to the relevant DOC rules to see whether their text leads to the same conclusion. As we noted, the phrase “during residency” that is used in the statute appears only once in the rules, in the introductory section. Otherwise, the rules refer only to inmates “who earn wages.” The defendants argue that this shorter phrase must be read in light of the full phrase used in the authorizing statute and introduction to the rule. We conclude that the department’s interpretation of its rule is reasonable. There is no indication that the shorter phrase is intended to have a different meaning; it is simply a shorter version of the complete phrase.

¶8 The parties' second dispute is whether the department may order the co-payment to be deducted only from wages, or from any funds in an inmate's accounts. The statute provides little guidance, other than to state that the department "shall require the resident to pay" the charge. *See* WIS. STAT. § 302.386(3)(b). Ledford relies on the definition of "wages" provided in WIS. ADMIN. CODE § DOC 316.02(10). However, that definition is not relevant to this issue because there is no statute or rule saying that the department may deduct the co-payment only from "wages".

¶9 Ledford also argues that neither the statute nor the rule gives the department the authority to take the co-payment from non-wage sources, and therefore the department is exceeding its authority. However, we conclude the statute provides sufficient authority. It requires the department to collect the charge, and it is reasonable to read this as allowing the department to collect the money from whatever funds the inmate has available.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

