



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/169731

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 30, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to Medical Assistance (MA), a hearing was held on January 20, 2016, by telephone. A hearing set for December 15, 2015, was rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly denied the petitioner's Elderly/Blind/Disabled (EBD) MA application of February 27, 2015.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Attorney [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: [REDACTED], ES Spec.  
Brown County Human Services  
Economic Support-2nd Floor  
111 N. Jefferson St.  
Green Bay, WI 54301

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of a nursing home in Brown County.

2. On February 27, 2015, a complete 90-page Institutional EBD MA application was filed on the petitioner's behalf. The Department issued written notice of denial of the application on March 18, 2015. The basis for denial was excess assets.
3. The petitioner submitted additional information to the Department on March 24, April 9 and 16, 2015. The April 16 submission included a new, signed signature page. The agency failed to promptly act upon the re-application and review the submissions. The petitioner's attorney telephoned the Department in July and again on August 4 to inquire as to the status of the application. At that time, the Department "re-activated" the April 16 application, and requested additional asset verification. That verification was due by August 17, 2015. *See*, verification request letter dated August 5, 2015.
4. On the verification deadline of August 17, the petitioner faxed 129 pages of verification to the Department. The Department's records contain only 60 pages of that material. After reviewing the material received and stored in ECF, the agency concluded that additional verification was needed.
5. A follow-up written verification request was drafted on September 2, 2015, with a declared due date for submission of September 11, 2015. However, the request dated September 2 was postmarked September 3. The application was then denied by written notice mailed on September 14, 2015.
6. On September 14, 2015, the petitioner's attorney faxed in the verifications requested on September 2, 2015. The agency declined to re-open the application.
7. The petitioner filed a new application on October 30, 2015, seeking coverage backdated to August 1, 2015. The petitioner was found to be eligible for MA at that time, subject to serving out a divestment penalty period. The penalty period is the subject of a separate appeal.

### DISCUSSION

To qualify for MA, a person must meet both non-financial and financial requirements. Wis. Stat. §49.47(4). At application, the agency must request income and asset verification. *Medicaid Eligibility Handbook, (MEH)*, §20.3.1 – 20.3.8, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. The agency must always give the client at least 10 days to supply requested verification. In the case of an application, the application should not be denied for lack of verification until 30 days has passed from the filing date. *Id.*, §20.7.1.1 . The responsibility for supplying verification then rests on the recipient. However, if the applicant promptly advises the agency that she cannot obtain the verification, the responsibility for obtaining verification shifts to the agency.

The agency erred in denying the February 27 application for verification failure on March 18, because it had not given the applicant the full 30 day period to provide verification. However, MA appeals must be filed within 45 days of the denial notice. Wis. Stat. § 49.45(5). I cannot fix the premature March denial because the petitioner did not file a hearing request within 45 days of the March 18 denial notice. I lack jurisdiction, as no appeal was filed until October 30.

The petitioner made additional evidentiary submissions to the Department on March 14, April 9 and April 16, 2015. Importantly, the April 16 submission included an executed signature page. The April 16 submission was a valid new application. *MEH*, § 2.4. The agency did not act on that April 16 application within 30 days, and did not issue a denial notice. The application therefore effectively continued to pend:

If an agency fails to take action (positive or negative) during the 30-day processing period, and the applicant is subsequently found eligible, as a result of his or her most recent Medicaid application, redetermine eligibility using the filing date associated with that most recent application.

*Id.*, § 2.7.1. Prompted by the petitioner's attorney's telephone calls in July and early August, the agency eventually "re-activated" the April 16 application and issued another verification request letter on August 5.

The August 5 asset verification letter (related to the April application) specified a verification deadline of August 17. The petitioner made a 129-page fax submission to the Department on August 17, as confirmed by the attorney's fax log. The agency agrees that faxed verification was received on August 17, but only 60 pages of that material can be found in the Department's Electronic Case File (ECF). Petitioner's attorney, who regularly practices in the elder law domain, maintains that the 129 page submission was fully responsive to the Department's verification request. I accept his representation.

Because the Department worker who reviewed the verification in the ECF saw missing items, she sent out another verification request, dated September 2, with a 10-day deadline. The petitioner has established that the verification request letter was not mailed until September 3. The dates on the Department's verification letters are presumed to be the mailing date, but that presumption can be rebutted by production, as happened here, of the postmarked envelope. Thus, the deadline should have been September 13. The petitioner supplied the requested verification on September 14, missing both the deadline declared in the notice, and the actual deadline of September 13.

However, none of the events in September determine the outcome of this case. Because I believe the attorney's representation that all requested verification was submitted to the Department on August 17, the September 2 request was unnecessary. This matter will be remanded to the agency with instructions to process the April 16, 2015 MA application. In reviewing Case Comments, it appears that the agency received most of the pertinent "missing" August 17 verification on September 14. Per the Comments, the agency may still need verification of the following items in order to complete processing of the April application: (1) verification/explanation for check # [REDACTED] for \$5,453.46, and (2) explanation of checking account entries of \$2,323 and \$987 on May 18, 2015. This matter will be remanded to the agency for corrective action; if necessary the agency may make a 10-day verification request for the items specified above. Also, even if the petitioner's April 16 application did not request backdating, the petitioner is not precluded from asking the agency for backdating of that application at this time. *See, MEH, 2.8.2.*

### **CONCLUSIONS OF LAW**

1. The petitioner's hearing request is untimely for purposes of contesting the denial, on March 18, 2015, of the petitioner's February 2015 MA application.
2. The agency incorrectly denied the petitioner's April 16, 2015 MA application on September 14, 2015. The basis for denial was incomplete asset verification; the petitioner did supply the requested verification on August 17, 2015, but the agency lost a portion of the verification.

**THEREFORE, it is**

**ORDERED**

That the petition is *remanded* to the agency with instructions to approve the petitioner's April 16, 2015, MA application subject to a possible verification request for (1) verification/explanation for check # [REDACTED] for \$5,453.46, and (2) explanation of checking account entries of \$2,323 and \$987 on May 18, 2015.

If needed, the verification request shall be made within 10 days of the date of this Decision, the verification response shall be made by the petitioner within 20 days of the date of this Decision, and the agency's benefit certification (if appropriate) shall be made within 30 days of the date of this Decision. In all other respects, the petition 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, 5005 University Avenue, Suite 201, 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

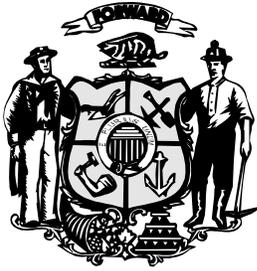
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 16th day of February, 2016

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



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

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
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 February 16, 2016.

Brown County Human Services  
Division of Health Care Access and Accountability  
Attorney [REDACTED]