



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/170645

PRELIMINARY RECITALS

Pursuant to a petition filed December 07, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on January 07, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly terminated the Petitioner's enrollment in Family Care for the period of August 1, 2015 – November 29, 2015 due to assets exceeding the program limit.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

]

Respondent:

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

By: [REDACTED]
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County. She is 33 years old and has a disability determination due to developmental disabilities. Petitioner's mother [REDACTED] is her legal guardian.
2. Petitioner receives monthly social security and SSI of \$1,176.77. Until November, 2015, the social security income was deposited into a checking account belonging to [REDACTED]. [REDACTED] paid Petitioner's rent and other expenses from that account.
3. On June 16, 2015, the Petitioner submitted a renewal application. On July 15, 2015, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of checking and savings accounts. The due date for the requested verification was July 24, 2015.
4. On July 22, 2015, the Petitioner submitted bank statements as follows:

Checking account in the name of Petitioner and [REDACTED]	\$ 2,299.85
Checking account in the name of [REDACTED]	\$11,391.37
Money market account in the name of Petitioner and [REDACTED]	\$ 200.78
5. On August 7, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her application for healthcare benefits was denied due to assets over the program limit of \$2,000.
6. On October 28, 2015, the Petitioner submitted a new application. Bank statements were submitted with the application as follows:

Checking account in the name of Petitioner and [REDACTED]	\$2,193.18
Money market account in the name of Petitioner and [REDACTED]	\$ 200.78
Checking account in the name of [REDACTED]	\$8,504.43
7. On November 2 and 4, 2015, the Petitioner submitted additional applications for Wisconsin Medicaid. She reported assets that included a checking account in the name of Petitioner and [REDACTED] with a balance of \$2,268.31 and money market account in the name of Petitioner and [REDACTED] with a balance of \$200.78.
8. On November 5, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her application was denied due to assets exceeding the program limit. The agency counted assets of \$8,883.62 from the checking account in the name of Petitioner and [REDACTED] and \$200.78 from the money market account in the name of Petitioner and [REDACTED].
9. On November 19, 2015, the Petitioner submitted a bank statement showing a checking account in the name of Petitioner and [REDACTED] with a balance of \$1,090.59 and money market account in the name of Petitioner and [REDACTED] with a balance of \$200.78.
10. On December 1, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her application of November 2, 2015 was approved and she was eligible for the Family Care program effective November 30, 2015 with a monthly cost share of \$263.77. Her counted assets were \$1,210.59.
11. On December 7, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

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

Chapter DHS 10. See also Medicaid Eligibility Handbook, Chapter 29, available at www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm.

Unlike the BC+ MA program, the FCP program operates under the traditional MA rules for elderly and disabled individuals. See MA Handbook, Appendix 29.1. Therefore to be eligible for FCP, a person must meet full benefit MA non-financial and financial requirements, with special provisions regarding income. Wis. Admin. Code, §DHS 10.34(2); MA Handbook, App. 29.3.1. Assets are treated the same as for elderly/disabled MA purposes except that married individuals can come under special spousal impoverishment rules as if they were institutionalized. See Wis. Admin. Code, §DHS 10.34(d), which refers to Wis. Stat., §§49.454 and 49.47(4)(b). §49.454 provides specific rules concerning trusts; §49.47(4)(b) refers to assets in general.

Wis. Stat., §49.47(4)(b) provides that assets for an MA applicant cannot be above \$2,000. The agency must count all available assets when determining eligibility. The Handbook contains instructions regarding how to consider a shared account:

When an EBD Medicaid applicant/member shares an account with an individual or individuals who are not EBD Medicaid applicant(s)/member(s) count the full amount of the account as a countable asset for the EBD Medicaid applicant/member.

MA Handbook, App. 16.4.1.2.

In this case, the agency counted the checking account in the name of ■ because the Petitioner's income was deposited into that account and ■ paid most of the Petitioner's expenses from that account. The agency argues that even though the account was in the name of ■ only, the Petitioner shared the account because her income was deposited into the account and her expenses were paid from the account. Therefore, the assets in the account were available to the Petitioner. The agency further notes that, even if the checking account of ■ was not counted as an asset of the Petitioner, the Petitioner was still over the asset limit of \$2,000 from her other checking and money market accounts.

The Petitioner's mother ■ argued that her checking account should not be counted as an asset of the Petitioner because it is not a joint account. She conceded that Petitioner's income is deposited into the account and Petitioner's expenses are paid from the account. ■ also did not dispute the balances of the Petitioner's joint checking and money market accounts.

Based on the evidence provided and the applicable MA regulations, I conclude that the agency properly terminated the Petitioner's enrollment in Family Care for the period of August 1, 2015 – November 29, 2015 due to assets exceeding the asset limit. While I find that the agency properly counted the checking account of ■ as a shared account, even without that account being considered an asset, there was no dispute that the Petitioner's checking and money market accounts alone exceeded the asset limit of \$2,000 during that period. In November, 2015, the Petitioner's checking account was under \$2,000 and ■ changed Petitioner's social security income to be deposited into the Petitioner's checking account. At that time, the Petitioner's assets went under the \$2,000 asset limit and she was properly found to be eligible for the Family Care program.

CONCLUSIONS OF LAW

The agency properly determined that the Petitioner was not eligible for the Family Care program for the period of August 1, 2015 – November 29, 2015 due to assets exceeding the program limit.

THEREFORE, it is

ORDERED

That the 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, 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 Milwaukee,
Wisconsin, this 29th day of February, 2016

\sDebra Bursinger
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 February 29, 2016.

Waukesha County Health and Human Services
Office of Family Care Expansion
Health Care Access and Accountability