



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MQB/171022

PRELIMINARY RECITALS

Pursuant to a petition filed December 29, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washburn County Department of Social Services in regard to Medical Assistance, a hearing was held on February 16, 2016, at Shell Lake, Wisconsin.

The issue for determination is

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: [Redacted]
Washburn County Department of Social Services
110 W 4th Avenue
PO Box 250
Shell Lake, WI 54871

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Washburn County.
2. As of December 7, 2015, the petitioner had a bank account solely in her name with \$159,176.44 in it.

3. The county agency determined that the petitioner is ineligible for Medicare Premium Assistance because her assets exceed the program's limit.

### DISCUSSION

The Specified Low Income Medicare Beneficiary (SLMB) and Specified Low Income Medicare Beneficiary Plus (SLMB+) are medical assistance sub-programs mandated by Wis. Stat. § 49.468(1m)(a) that pay their participants' Medicare Part B premiums. *Medical Eligibility Handbook*, § 32.1.1. The Qualified Medicare Beneficiary (QMB) program pays not only the Medicare Part B premium but also some Medicare deductibles and co-payments. The highest asset limit for each sub-program is \$7,280 for a person living alone. *Medicaid Eligibility Handbook*, § 32.6. The program uses the same rules for determining financial eligibility as Medicaid. *Medicaid Eligibility Handbook*, § 32.1.1. The county agency denied the petitioner's request for medical assistance because she received \$151,068 from six cashier's checks in 2011 and, as of December 7, 2015, has bank account solely in her name with \$159,176.44 in it.

Wisconsin regulations hold that "only the assets actually available to that person shall be considered." Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. § 49.47(4)(b)3g. She contends that the cashier's checks are actually her brother's assets that he inherited from their mother. She also received an inheritance, but she bought a house with hers. According to her story, brother wrote the checks out to her because he was too depressed to leave his house and wanted her to have access to the money in case he needed it. I had trouble following the logic of this because with online banking one can have access to his money without leaving the house. Moreover, the petitioner's brother must have some access to the outside world or he would starve.

Regardless, the checks are made out to the petitioner alone and they are held in a bank account solely in her name. She is not her brother's legal guardian. The only credible evidence is that this is her money and she has a legal right to use it as she pleases. This makes it an available asset that must be considered when determining her eligibility for Medicare Premium Assistance. Because her assets exceed \$7,280, the agency correctly determined that she is ineligible for the program.

### CONCLUSIONS OF LAW

1. The \$159,176.44 in the petitioner's bank account is an available asset.
2. The petitioner is ineligible for Medicare Premium Assistance because her assets exceed the program's limit.

**THEREFORE, it is**

**ORDERED**

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 Madison,  
Wisconsin, this 17th day of February, 2016

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\sMichael D. O'Brien  
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 17, 2016.

Washburn County Department of Social Services  
Division of Health Care Access and Accountability  
[REDACTED]@gmail.com