



FH
[REDACTED]

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

In the Matter of

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

DECISION

MGE/172122

PRELIMINARY RECITALS

Pursuant to a petition filed February 16, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on March 15, 2016, at Milwaukee, Wisconsin.

The issues for determination are whether this appeal is timely as to the denial of a September 2015 application for institutional Medicaid; if timely, whether that application was correctly denied and whether the cash value of a life insurance policy has been designated as a burial fund.

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]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Milwaukee County.

2. An application for institutional Medicaid was filed by or on behalf of Petitioner on September 25, 2015. Backdating to July 1, 2015 was requested. At that time Petitioner had a life insurance policy with a cash value of \$3730.24.
3. The September 2015 institutional Medicaid application was denied and a notice dated October 23, 2015 was issued that informed Petitioner of the denial and an appeal deadline of December 8, 2015 was noted. The notice was sent to an address on [REDACTED] in Greendale, WI. It is not clear why it was sent there as the application clearly indicates the above address.
4. A second application for institutional Medicaid was filed by or on behalf of Petitioner in late December 2015. Backdating to September 1, 2015 was requested. That application was approved with eligibility effective November 1, 2015 as the life policy had been surrendered in November 2015. This approval was apparently an error as Petitioner still had the cash value proceeds.
5. Petitioner passed away on January 3, 2016.
6. Petitioner’s spouse was also a resident of the same nursing home as Petitioner and he passed away in December 2015.

DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medical Assistance matters must be filed within 45 days of the notice of the county agency decision. §49.45(5)(a), Wis. Stats. This assumes proper notice. Here the October 23, 2105 notice was not sent to Petitioner’s address so I am finding the appeal to be timely.

Petitioner’s family and the nursing home representative would like to have the case value of the life insurance to be designated as burial funds and the Medicaid eligibility backdated to July 1, 2016.

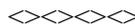
The following provisions from the Medicaid Eligibility Handbook are relevant here:

16.2.1 Assets Availability Introduction

An asset is available when:

1. It can be sold, transferred, or disposed of by the owner or the owner’s representative, and
2. The owner has a legal right to the money obtained from sale of the asset, and
3. The owner has the legal ability to make the money available for support and maintenance, and
4. The asset can be made available in less than 30 days.

...

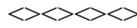


16.7.5 Life Insurance

Count the cash value of all life insurance policies. For persons 65 years old or older, blind, or disabled, count it only when the total face value of all policies, including riders and attachments, owned by each person exceeds \$1,500. Do this calculation for each elderly, blind, or disabled person. In determining the face value, do not include any life insurance which has no cash value.

Face value is the basic death benefit of the policy including the value of riders and other attachments.

Cash value means the net amount of cash for which the policy could be surrendered after deducting any loans or liens against it.



16.5.5 Burial Funds

Burial fund exemptions apply only to EBD Medicaid fiscal group members. Burial funds are funds that are set aside for burial expenses. EBD Medicaid members and their spouses may each have one burial fund.

To find the amount of a burial fund that can be exempted, add:

1. The face value of the person's irrevocable burial trusts.
2. The face value of all of his or her life insurance policies whose cash value is exempt.
3. The face value of his or her exempt burial insurance (see Section 16.5.2 Burial Insurance).
4. The CSV of revocably assigned LIFBC (see Section 16.5.3.2 Revocable Assignment of Life Insurance-Funded Burial Contracts).
5. The burial funds portion of irrevocably assigned LIFBC (see Section 16.5.3.1 Irrevocable Assignment of Life Insurance-Funded Burial Contracts).

If the total value of the above items is \$1,500 or more, do not exempt any more burial funds. If the total is less than \$1,500, subtract the total from \$1,500. The result is the amount of his or her burial fund total that is exempt.

[Examples omitted]

Anyone claiming a burial fund must sign a statement identifying the fund's location, type, amount, and account number. The statement must specify the month and year in which he or she first intended to set the fund aside for burial.

The fund can be excluded retroactively back to the first day of the specified month, but no earlier than November 1, 1982. It loses its exemption if it is used for anything other than the person's burial.

The fund set aside for burial must be identifiable, but not necessarily segregated, from other funds.

Applying these provisions to this case, I do not find that Medicaid eligibility can be backdated as requested or that the Division of Hearings and Appeals can direct that the cash value of Petitioner's life insurance can be designated as a burial fund. There is no evidence to indicate that the cash value was an unavailable asset at the time of the processing of the September 2015 application and there was no designation by Petitioner claiming a burial fund as to the cash value of the life insurance policy involved here.

CONCLUSIONS OF LAW

1. That Petitioner's appeal is timely as to a September 2015 Medicaid application and subsequent denial.
2. That The September 2015 Medicaid application was correctly denied as Petitioner was over the Medicaid asset limit.
3. That there was no designation of the cash value of the life insurance policy at issue here as a burial fund.

THEREFORE, it is

ORDERED

That this 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 9th day of May, 2016

\sDavid D. Fleming
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 May 9, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability