



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

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In the Matter of

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

DECISION

MGE/173552

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 08, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a hearing was held on May 10, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner’s MA application.

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.
2. On February 23, 2016, the Petitioner submitted an MA application with a backdate request to January, 2016.

3. The agency had information from a previous case that listed Petitioner's assets as including a home and land. The agency requested additional information regarding the property.
4. The Petitioner's home and land was sold on October 10, 2013 for \$60,208.05. The agency requested verification of use of the proceeds from the property sale.
5. The Petitioner's family produced Petitioner's bank records showing cash withdrawals of \$41,000 from October, 2013 – November, 2014. The withdrawals are made in large increments of \$1000 - \$10,000. The family also produced records from a [REDACTED] demonstrating that Petitioner had a loss of \$16,589. This was based on records of Petitioner's use of a [REDACTED] club card.
6. The Petitioner handled her own financial affairs until she was admitted to the nursing home in November, 2014. She has stated she does not recall what she did with the money other than spending at the [REDACTED] and she has no receipts to demonstrate. She reported that she may have bought some furniture after she sold her home and moved to a new place. It was also reported that she spent a lot of money on clothing.
7. The Petitioner's daughter purchased a home for the Petitioner after Petitioner sold her property. Petitioner paid rent of \$350/month to her daughter from approximately October, 2013 – November, 2014. She paid the rent with a check.
8. At the time of her application, the Petitioner reported \$2000 in a checking account and \$300 in savings. She also reported a burial trust. In addition, Petitioner has monthly income of \$1,298 from social security.
9. On April 8, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

MA certification is available if all conditions of eligibility-- including meeting the asset test are providing necessary, requested verification, are satisfied. Wis Admin. Code § DHS 103.08(1). Certification pursuant to an application can be made retroactive for up to three months. For a single person seeking Institutional MA coverage, the asset limit is \$2,000. Wis. Stat. §49.47(4)(b). See also MA Eligibility Handbook (MEH), Table 39.4 (EBD), viewable online at <http://www.emhandbooks.wi.gov/meh-ebd/>.

It is the responsibility of the applicant or member to provide verification of assets but the agency also has a responsibility to use all available data exchanges to verify information. Medicaid Eligibility Handbook (MEH), §20.5. The agency must also assist the member in obtaining verification if she has difficulty in obtaining it. Id. If an applicant or member does not have the ability to produce verification, the agency must use the best information available to process the application. Id. Eligibility cannot be denied when the applicant or member does not have the ability to produce verification. Id. The MEH states as follows:

Use the best information available to process the application or change within the time limit and issue benefits when the following two conditions exist:

1. The member does not have the power to produce verification, and
2. Information is not obtainable timely even with your assistance.

In this situation, seek verification later. When you have received the verification, you may need to adjust or recoup benefits based on the new information. Explain this to the member when requesting verification.

Id.

In this case, the agency concedes that there is no evidence of a divestment and no evidence of any other assets or bank accounts owned by the Petitioner other than what was reported in the application. The Petitioner's family was credible in their testimony that they have no information or ability to produce verification of how or when the Petitioner spent the money that she withdrew from her bank account. The Petitioner clearly has no ability to produce any additional verification. Based on the evidence, it seems likely that the Petitioner spent the money at [REDACTED] (not a divestment) and on furniture and clothing.

The agency has the responsibility to assist the Petitioner in obtaining verifications and the ability to use data exchanges to obtain information. If the agency is unable to obtain any additional information, it is required to make a decision on eligibility based on the best information available. If additional information or evidence is later obtained, the agency has the ability to re-determine eligibility and recoup benefits if incorrectly issued. The agency cannot, however, deny or decide not to process the application indefinitely based on lack of verification when there is no evidence that there is additional verification that an applicant is able to obtain.

Therefore, this matter is being remanded to the agency to make a determination of eligibility based on the best information available which, at the time of the hearing, appeared to be the report of assets and income in the Petitioner's application. If the agency believes there was a divestment of \$41,000, it needs evidence to support the argument that there was a transfer of funds meeting the definition of divestment in the MA policy.

### CONCLUSIONS OF LAW

The agency did not properly deny the Petitioner's application for MA eligibility.

**THEREFORE, it is**

### ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to determine the Petitioner's MA eligibility based on the February 23, 2016 application and any additional information the agency is able to obtain regarding verification of Petitioner's assets. The agency shall issue a new notice of decision with new appeal rights to the Petitioner upon determining her eligibility. These actions shall be completed within 10 days of the date of this decision.

### **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 27th day of June, 2016

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\sDebra Bursinger  
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 June 27, 2016.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability