



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

Case #: MGE - 173636

PRELIMINARY RECITALS

On April 12, 2016, the above petitioner filed a hearing request under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to challenge a decision by the Waukesha County Health and Human Services regarding Medical Assistance. The hearing was held on June 2, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly determined that the Petitioner was not eligible for MA in January and February, 2016 due to being over the asset limit as a result of a life insurance policy.

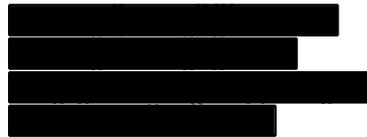
There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI53703

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. Petitioner was institutionalized for 30 continuous days beginning August 22, 2015. Petitioner's husband is the legal guardian of the Petitioner and the legal guardian of the Petitioner's estate.
3. Petitioner's husband owned a life insurance policy with [REDACTED] with a cash value of \$45,023.68 (policy no. ending in [REDACTED]).
4. On December 21, 2015, a Guardianship or Conservatorship Inventory was filed in Waukesha County Circuit Court Case No. [REDACTED]. The guardianship inventory included the Petitioner's husband's [REDACTED] life insurance policy. It was asserted that the Petitioner had a marital interest in the policy. The cash value at the time was listed as \$44,754.18.
5. On January 28, 2016, a Petition to Authorize Transfer of Income and Assets of Person under Guardianship was filed by the Petitioner's husband in Case No. [REDACTED]. The Petitioner's husband requested that the [REDACTED] insurance policy owned by him be transferred in its entirety to him.
6. On February 8, 2016, an application for MA was filed with the agency on behalf of the Petitioner with a start date request of January 1, 2016.
7. On February 22, 2016, the agency issued an asset assessment notice to the Petitioner informing her that combined countable assets of the Petitioner and her husband were \$142,917.78 as of August 22, 2015 and total assets that the asset share for purposes of MA eligibility was \$73,458.89.
8. On March 2, 2016, a court order authorized the Petitioner's husband, as guardian of the Petitioner, to surrender a life insurance policy, transfer the cash value to Petitioner's husband and transfer ownership of the policies to the Petitioner's husband.
9. On March 11, 2016, the agency issued a letter to the Petitioner's representative advising her that the Petitioner's MA application was denied for excess assets because it considers the [REDACTED] life insurance policy owned by the Petitioner's husband as an available asset.
10. On March 14, 2016, the agency issued a Notice of Decision to the Petitioner informing her that her application was denied due to assets over the asset limit. The notice indicated that the agency determined the Petitioner's countable assets as \$109,395.97 for January, February, March and April, 2016. This included the cash value of the [REDACTED] life insurance policy owned by the Petitioner's husband.
11. On April 6, 2016, the agency issued a Notice of Decision to the Petitioner's representative informing her that the Petitioner is eligible for Institutional MA effective March 1, 2016.
12. On April 12, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Medical assistance is meant to pay for "health care services for qualified persons whose financial resources are inadequate to provide for their health care needs." Wis. Admin. Code, § DHS 101.01. Generally, a person cannot be eligible if her assets exceed \$2,000 or, if married, her and her spouse's combined assets exceeded \$3,000. Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. §§ 49.46(1) and 49.47(4). When one spouse is institutionalized and the other remains in the community, spousal impoverishment rules apply to increase the asset limit, allowing an institutionalized spouse to allocate assets to the community spouse. The amount of assets that a couple can hold and allocate are not unlimited. The MA agency reviews the assets of the couple and makes an asset determination. Based on that determination, the institutionalized spouse's eligibility for MA is determined.

In reviewing assets, the agency is governed by MA rules regarding how to determine which assets are countable in making an asset determination. Pertinent to this matter, the Medicaid Eligibility Handbook states as follows:

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.

Consider an asset as unavailable if either:

- 1.The member lacks the ability to provide legal access to the assets, and
- 2.No one else can access the assets, and
- 3.A process has been started to get legal access to the assets.

Or,

When the owner or owner's representative documents that the asset will not be available for 30 days or more, and the process has been started to obtain the assets.

Use the criteria above to determine whether an asset was available in a backdate month unless an asset is deemed unavailable in the month of application because it will not be available for 30 or more days (considered unavailable in any or all backdate months).

Medicaid Eligibility Handbook, § 16.2.1.

In this case, the dispute centers on one asset, the [REDACTED] Life insurance policy owned by the Petitioner's husband with a cash value of \$45,023.68. The agency asserts that this was a countable asset because it was owned by the Petitioner's husband and he therefore had legal ownership and access rights over it which met the criteria in MEH 16.2.1.

The Petitioner argues that the life insurance policy of the Petitioner's husband was not an available asset because it was part of the guardianship estate of the Petitioner. The Petitioner asserts that, under the laws governing guardianships, the Petitioner's husband did not have access to the life insurance policy and could not surrender the policy unless he received prior court approval. The Petitioner cites to the following laws governing guardianships:

Wis. Stats. § 54.60 Inventory.

- (1) Inventory required. The guardian of the estate shall prepare an inventory that lists all of the ward's income and assets, including interests in property and any marital property interest, regardless of how the asset is titled.

Wis. Stats. § 54.20

(2)(d) Powers requiring court approval. The guardian of the estate may do any of the following with respect to the ward's income and assets only with the court's prior written approval following any petition and upon any notice and hearing that the court requires:

...

(d) Purchase an annuity or insurance contract and exercise rights to elect options or change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value.

...

(h) If appointed for a married ward, exercise any management and control right over the marital property or property other than marital property and any right in the business affairs that the married ward could exercise under ch. 766 if the ward were not an individual found incompetent, consent to act together in or join in any transaction for which consent or joinder of both spouses is required, or execute under s. 766.58 a marital property agreement with the ward's spouse or, if appointed for a ward who intends to marry, with the ward's intended spouse, but may not make, amend or revoke a will.

Based on the evidence presented, I conclude that the Petitioner is correct that the life insurance policy of the Petitioner's husband was not an available asset because, at the time of the Petitioner's application for MA, the asset was part of the guardianship estate and could not be accessed without prior court approval. Upon receipt of a court order on March 2, 2016, the Petitioner's husband obtained access to the funds in the policy and spent down the assets to allow the Petitioner to become eligible. As noted by the Petitioner's representative, the Petitioner's husband could not have acted to surrender the cash value of the policy prior to receiving court approval without breaching his fiduciary duties under the guardianship laws. Therefore, I conclude the life insurance policy was not an available asset and the agency should re-determine Petitioner's eligibility for MA for January and February, 2016 based on the life insurance policy being an unavailable asset.

CONCLUSIONS OF LAW

The [REDACTED] life insurance policy (policy no. ending in [REDACTED]) owned by the Petitioner's husband was not an available asset and the agency should re-determine Petitioner's eligibility for MA for January and February, 2016 based on the life insurance policy being an unavailable asset.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to re-determine the Petitioner's eligibility for MA for the months of January and February, 2016. Said re-determination shall not include the [REDACTED] life insurance policy of the Petitioner's husband (policy no. ending in [REDACTED]) as a countable asset. The agency shall issue a new Notice of Decision to the Petitioner based on its re-determination with new appeal rights. All of 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, **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 22nd day of July, 2016

\s _____
Debra 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 July 22, 2016.

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

