



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MGE/141129

PRELIMINARY RECITALS

Pursuant to a petition filed May 23, 2012, 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, a hearing was ultimately held on July 31, 2012 after a rehearing request was granted following a failure to appear for an earlier hearing, at Waukesha, Wisconsin. Petitioner's representatives were given an opportunity post hearing to demonstrate the efforts made to surrender insurance policies that were the subject of this hearing. They did submit additional documents.

The issue for determination is whether assets that led to the denial of backdated institutional Medicaid were available.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Sabrina Boyd

Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. This appeal was filed on behalf of Petitioner to contest the denial of institutional Medicaid for the months of January and February 2012.
3. The denial of institutional Medicaid for the months of January and February 2012 was because Petitioner had assets in excess of Medicaid asset limits.
4. The assets of the agency determined Petitioner over the asset limit for life insurance policies with cash value. Those policies were all issued by Mutual of Omaha, surrendered and the checks issued as follows:
 - Policy #7177331 check dated March 20, 2012 in the amount of \$1028.50
 - #7483831 check dated March 20, 2012 in the amount of \$2914.98
 - #1948747 check dated March 20, 2012 in the amount of \$ 471.34
 - #6296098 check dated March 28, 2012 in the amount of \$3281.98
5. Petitioner was found eligible for institutional Medicaid effective March 1, 2012 as the cash value proceeds were immediately spent for Petitioner's care.
6. Petitioner, her POA and/or the representative of Petitioner's nursing home made multiple contacts with the life insurance company which issued the policies involved here, Mutual of Omaha, in January 2012 requesting that the policies be cashed out. Mutual of Omaha responded with a letter in mid-February 2012 along with the forms necessary to surrender the policies. Petitioner submitted the surrender forms to Mutual of Omaha. The date Petitioner signed the first three surrender documents was February 27, 2012 and the 4th policy was signed on March 5, 2012.
7. Petitioner's group size was one.

DISCUSSION

The income limit for a medically needy elderly, blind or disabled household with two people is \$591.67. The asset limit for that group is \$2000.00 *Medicaid Eligibility Handbook (MEH)*, §39.4.1.

The cash surrender value of life insurance is counted as an asset for Medicaid purposes:

Face value is the basic death benefit of the policy exclusive of dividend additions or additional amounts payable because of accidental death or under other special provisions. Cash value means the net amount of cash for which the policy could be surrendered after deducting any loans or liens against it.

Count the cash value of all life insurance policies. For persons age 65 or over, blind or disabled, count it only when the total face value of all policies owned by each person exceeds \$1,500. Do this calculation for each EBD person. In determining the face value, do not include any life insurance which has no cash value.
MEH, §16.7.5.

Nonetheless, an asset must be available to the Medicaid applicant/recipient to be counted against the asset limit:

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.

Consider an asset as unavailable if:

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.

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).

The documents submitted by Petitioner's representatives demonstrate the efforts made to surrender the insurance policies involved here. The only missing information is Mutual of Omaha's return correspondence from February 2012 for policy # 6296098. The rest of the documentation, however, matches the policies and demonstrates that Petitioner and her representatives were making efforts to surrender these policies. There is no reason to believe that those efforts were not applicable to policy #6296098. It is apparent that there were barriers to the surrender the Mutual of Omaha policies that made them unavailable to Petitioner for more than 30 days. I am, therefore, concluding the policies were not available to Petitioner in January and February 2012 thus institutional Medicaid eligibility for Petitioner should be extended to those months.

CONCLUSIONS OF LAW

That Petitioner's request to have her institutional Medicaid backdated to January and February should be granted as the assets that led to the denial of that request were not available to Petitioner.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to take the steps necessary to certify Petitioner for institutional Medicaid coverage for January and February 2012, assuming there are no other bars to that eligibility. This must be done within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of October, 2012

David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals

c: Waukesha County Health and Human Services - email
Department of Health Services – email



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The preceding decision was sent to the following parties on October 25, 2012.

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