



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

MGE/142841

PRELIMINARY RECITALS

Pursuant to a petition filed August 03, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services in regard to Medical Assistance, a hearing was held on September 25, 2012, at Janesville, Wisconsin.

The issue for determination is

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: Pamela Edmonds

Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Petitioner had been living at [REDACTED] until May 24, 2012.

3. In the middle of May, petitioner learned that she could move to an available spot at [REDACTED]
4. On May 23, 2012, petitioner's son, and her power -of-attorney, deposited \$2,000 in petitioner's checking account to pay for the balance at [REDACTED] where his mother would be leaving.
5. On May 24, 2012, petitioner moved to [REDACTED]
6. On May 31, the balance in petitioner's bank account was \$4,218.35.
7. On June 4, the check written by petitioner's son cleared petitioner's bank and the funds were debited.
8. In June 2012, petitioner applied for Institutional Long-Term Care MA benefits. Petitioner requested backdating to May 2012.
9. On June 22, 2012, the Department sent a notice granting LTC MA benefits effective June 1, 2012.
10. Petitioner filed a timely appeal.

DISCUSSION

To be certified for Institutional MA, a person cannot have nonexempt assets in excess of \$2,000. Wis. Stat. §49.47(4)(b)3, Medicaid Eligibility Handbook (MEH), § 39.4. If available assets are above that limit, the person is not eligible for MA. Available assets generally include: Joint accounts. (16.4.1 Joint Accounts); ... Savings account; Checking account; Cash available MEH § 16.1.

A backdate request for up to three months prior to the application month can be made at any time. MEH, § 2.8.2. However, a person's asset eligibility in a backdate month is determined by whether or not s/he had excess assets on the last day of the month. If so, s/he is ineligible for the entire month. MEH, § 2.8.2. Unfortunately, neither the Wisconsin statutes nor the Medicaid rules provide any exceptions for unusual situations. I have no authority or discretion other than to apply the rules of the Program.

In this case, petitioner's son argued that petitioner was over the asset limit because he deposited funds from his own personal account into petitioner's account on May 23, 2012 in order to cover a check for her care. The balance of that account, due to the deposit, exceeded \$2000 on the last day of May 2012. Ultimately, petitioner's son wrote a check on about a week later on June 1 and the funds were disbursed from the account on June 4. But, the rules require a determination of assets to be based on assets available on the last day of the month. In this case, it is clear that the assets on May 31 exceeded \$2,000. Had the check been written and issued prior to the last day of the month, then petitioner could have argued that the assets (funds) were not available. But, the record clearly shows that the check was not written until June 1. Furthermore, the \$2,000 deposited by petitioner's son is not the reason the account was over assets in the first place. I note that the balance of the account on May 23, prior to the deposit, was \$2,576.69. Petitioner would have been over the asset limit even if petitioner had not made the deposit.

CONCLUSIONS OF LAW

The petitioner was not eligible for MA Long Term Care in May 2012 because assets available to her in her bank account exceeded \$2,000.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

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 Madison,
Wisconsin, this 11th day of October, 2012

John P. Tedesco
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 October 11, 2012.

Rock County Department of Social Services
Division of Health Care Access and Accountability