



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MGE/143247

PRELIMINARY RECITALS

Pursuant to a petition filed August 18, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the St. Croix County Department of Human Services in regard to Medical Assistance, a hearing was held on September 20, 2012, at New Richmond, Wisconsin.

The issue for determination is whether the county agency correctly determined that the petitioner first became eligible for institutional medical assistance in December 2011 and whether the petitioner's appeal is timely.

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: Diane Peterson

St. Croix County Department of Human Services
1445 N. Fourth Street
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) was a resident of St. Croix County until she died on November 15, 2011.

2. The petitioner sold stock on October 31, 2011, and spent enough to bring her assets below \$2,000 on November 4, 2011.
3. The petitioner applied for medical assistance on October 11, 2011. The county agency denied that application on October 19, 2011. She reapplied on February 14, 2012. The agency found her eligible as of November 1, 2011.
4. The petitioner appealed the agency's denial s on August 18, 2012. She seeks benefits for October and November 2011.

DISCUSSION

A person cannot receive institutional medical assistance if her assets exceed \$2,000. Wis. Stat. §§ 49.46(1) and 49.47(4). Medical assistance eligibility can be made retroactive to “the first day of the month 3 months prior to the month of application.” Wis. Adm in. Code § DHS 103.08(1). Applicants must appeal denials within 45 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Admin. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it.

The petitioner, who died last November, first applied for institutional medical on October 11, 2011. The county agency denied that application on October 19, 2011, because she had stock that put her assets over \$2,000. She sold her stock on October 31 and by November 4 spent enough to bring her assets below \$2,000. She reapplied on February 14, 2012, and was found eligible as of November 1, 2011. Her daughter contacted the county agency at various times over the next several month attempting to obtain benefits retroactive to September 1, 2011. Finally, on August 18, 2012, she appealed. At the hearing her daughter contended that if the agency had been more responsive to her questions, she would have sold the stock in time for her mother to have been eligible in September 2011.

The petitioner's appeal is clearly more than 45 days past both denials. There are agency notes indicating that her daughter contacted it on March 6, 2012. Even if I give her the benefit of a doubt and determine that this was a valid attempt to appeal, only the appeal of the later decision would be timely. This means that even under a view most favorable to the petitioner, I could only consider whether the agency correctly determined her eligibility based on the February 14 application. Because medical assistance eligibility can be made retroactive to “the first day of the month 3 months prior to the month of application,” the earliest she could be found eligible is November 1, 2011, which is the date she was found eligible. Therefore, I must uphold the agency's decision.

CONCLUSIONS OF LAW

1. There is no jurisdiction to determine whether the agency's October 19, 2011, denial was correct because the petitioner's appeal was untimely.
2. The petitioner has received all of the benefits she can legally receive under her February 14, 2012, appeal because benefits were granted retroactive to the first day of the month 3 months prior to the month of her application.

THEREFORE, it is

ORDERED

The petitioner's 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 25th day of September, 2012

Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals

c: St. Croix County Department of Human Services - email
Department of Health Services - email



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

St. Croix County Department of Human Services
Division of Health Care Access and Accountability