



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MGE/143965

PRELIMINARY RECITALS

Pursuant to a petition filed September 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 November 29, 2012, at New Richmond, Wisconsin. A hearing scheduled for October 23, 2012.

The issue for determination is when a check written before the end of the month but not cashed until the next month became an unavailable asset when determining medical assistance eligibility.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Attorney Jennifer A. O'Neill
900 Crest View Drive Suite 220
Hudson, WI 54016

Respondent:

Department of Health Services
1 West Wilson Street
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]) is a resident of St. Croix County.

2. The petitioner applied for institutional medical assistance on July 31, 2012, and seeks eligibility retroactive to June 1, 2012.
3. The petitioner has been in a nursing home since at least June 1, 2012.
4. The petitioner wrote a check for \$10,000 to WisPACT on June 29, 2012. The check did clear the bank until July 26, 2012.
5. The assets in WisPACT are exempt and lowered the petitioner's assets below \$2,000.

DISCUSSION

A person cannot receive institutional medical assistance if her assets exceed \$2,000. Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. §§ 49.46(1) and 49.47(4). When determining eligibility, only those assets “actually available” are considered. Wis. Admin. Code, § DHS 103.06(1)(a). Eligibility begins “on the date on which all eligibility requirements were met, but no earlier than the first day of the month 3 months prior to the month of application.” Wis. Admin. Code § 103.08(1). When retroactive benefits are requested, eligibility depends upon whether the assets exceeded the limit on the last day of the month. *Medicaid Eligibility Handbook*, § 2.8.2.

The petitioner applied for medical assistance on July 31, 2012, seeking eligibility retroactive to June 1, 2012. She used \$10,000 to set up a WisPACT account. The parties agree that the money in this account does not count toward the medical assistance limit and that it reduced her assets below \$2,000. The question is when the money was considered unavailable. She contends that this occurred on June 29, 2012, the date on the check and the date she contends that she wrote and sent it. The agency contends that it was unavailable until late in July when it cleared the bank because until then she could stop payment and use the money for other purposes. If the money became unavailable on June 29, 2012, she became eligible for medical assistance on June 1, 2012; if it did not become unavailable until later in July, her eligibility did not begin until July 1, 2012.

After consulting with the Department's Policy Call Center, the county agency conceded that there is no policy that pertains specifically to a situation where a check was written in one month and cashed in the next. The Call Center advised the county agency to count the money as an asset until the check was cashed because “if the amount is still in the checking account, but a check is written, the owner can put a stop payment on the check, so the funds are still available to the recipient/applicant.” *December 4, 2012, email from Candice Canales to Diane Peterson*. While this is true, the position requires one to assume that the petitioner will commit behavior that borders on fraud, something her bank statement showing a cleared check proves she did not do. In any practical sense, she could not use the money once she wrote and sent the check, which makes it an unavailable asset at that point.

The remaining question is whether she established that she did in fact write and send the check before July 1, 2012. The Call Center contends that it has no proof she did. This is false. The petitioner's attorney, Jennifer O'Neill, provided documentation showing that she sent the check and documents to WisPACT on Friday, June 29, 2012. Although she was not under oath, I assume based upon frequent dealings with her that she would not mislead the tribunal. (Misleading a tribunal could jeopardize her law license, but in Ms. O'Neill's case, I have found no evidence that such a threat is necessary for her to act honestly.) In addition, a representative of WisPACT responded in writing to her on July 5, which is about as soon as one would expect, given that a weekend and July 4th fell between the two dates. It is unclear why the check did not clear before late in July, but because WisPACT acknowledged receipt of the documents on July 5, 2012, I assume it had nothing to do with when the petitioner sent it.

What the Call Center seems to mean when it contends that the petitioner provided *no evidence* is that she did not provide *indisputable evidence*, which, it points out, could have been established with a cashier's check. A cashier's check would have provided indisputable evidence, and if there were a regulation

making her eligibility in this type of situation dependent upon such a check, she could not be found eligible retroactive to June regardless of any other evidence she provided showing that she wrote the check that month. This is because the Department has the authority to enact reasonable requirements that reduce or eliminate doubt concerning financial information. But there is no such regulation, so the agency cannot deny her application solely because she did not provide it. What it must do is determine her eligibility based upon whether she met the burden of proof required in medical assistance cases. That burden is by the preponderance of the credible evidence, which means that it is more likely than not that what she is trying to prove did in fact occur. Her eligibility depends upon one contested fact —whether she wrote and sent the \$10,000 check to WisPACT before July 1, 2012. She has established that it is more likely than not that she did. As a result, her available countable assets fell below \$2,000 in June 2012, and she is eligible for medical assistance retroactive to June 1, 2012.

CONCLUSIONS OF LAW

1. The assets used to cover a check became unavailable the date that the check was written.
2. The petitioner's available assets fell below \$2,000 on June 29, 2012.
3. The petitioner was eligible for medical assistance as of June 1, 2012.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it make the petitioner eligible for institutional medical assistance retroactive to June 1, 2012.

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 served and 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, 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 18th day of December, 2012

\sMichael D. O'Brien
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 December 18, 2012.

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