



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

MGE/144620

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 17, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wood County Human Services - WI Rapids in regard to Medical Assistance, a telephone hearing was held on November 21, 2012.

The issue for determination is whether the respondent correctly denied petitioner's application for MA-institutional care benefits.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Beulah Garcia

Wood County Human Services - WI Rapids  
320 West Grand Avenue  
PO Box 8095  
Wisconsin Rapids, WI 54495-8095

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. The petitioner applied for medical assistance on September 14, 2012. The county agency denied his application on October 1, 2012, because his assets exceeded the program's limit.

### DISCUSSION

To qualify for MA, a person must meet both non-financial and financial requirements. Wis. Stat. §49.47(4). A person generally cannot receive medical assistance if his available assets exceed \$2,000. Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. § 49.47(4)(b)3g. The county agency denied the petitioner's application for institutional medical assistance after finding that his assets exceeded \$2,000.00 during the entire time that petitioner was receiving institutional MA care. There is not a dispute as to the identification of petitioner's assets, but instead petitioner argues that he did not receive correct information from respondent's employees as to how to properly reduce the assets, and was not informed of timeliness issues.

The respondent identified the following assets: Burial: \$10,000; Life Insurance: \$2,400.00, Automobile: \$1.00; Checking Account: \$2,778.58; Cash: 773.00. Respondent's electronic case notes indicate that petitioner's son spoke with respondent's employee(s) on September 20, 2012, and September 25, 2012, and discussed how to properly reduce petitioner's assets. See, Exhibit 3A. No specific details are provided regarding the reduction instructions provided by petitioner's employee(s).

Petitioner's son testified that he was instructed by respondent's employee to pre-pay petitioner's property taxes on September 20, 2012. Petitioner's son immediately commenced the process to cash out his father's IRA, and contacted Wood County to find out how to go about pre-paying property taxes. Petitioner died unexpectedly on September 23, 2012. Petitioner's son continued his efforts to reduce petitioner's assets following his father's death. He testified that he was never informed that he needed to conclude the asset reduction by the end of the month. On October 1, 2012, petitioner contacted respondent, and was informed that petitioner was not eligible, and would not qualify for backdating. See, *Id.*

Respondent cites the following basis for its determination that petitioner would not qualify for backdating:

#### Assets

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 s/he had excess assets on the last day of the month, s/he is ineligible for the entire month. If s/he was asset eligible on the last day of the month, s/he is eligible for the whole month.

*Medicaid Eligibility Handbook*, § 2.8.2.

What this all boils down to is the question of what information *should have been* provided to petitioner's son. He clearly received information on appropriate asset reduction actions. What he lacked was an indication that his efforts needed to be concluded by the end of the backdate month. MA rules are numerous and complicated. I cannot find that the respondent had an obligation to explain all of them to petitioner's son; he also bears responsibility for abiding by those rules and ensuring his adherence to them.

If this were a case where respondent erroneously told petitioner's son that he had 60 days to reduce petitioner's assets, my decision here may have been different. In the present circumstance, however, I do not find it unreasonable that respondent's employee(s) did not instruct petitioner as to the specific

deadline to complete the asset reduction to ensure backdating availability.<sup>1</sup> Respondent's Case Comments verify that respondent was aware of petitioner's efforts in this regard, and petitioner testified that he received asset reduction instructions on September 20, 2012. It could be reasonably assumed by respondent that petitioner would be concluding the asset reduction within the next 10 days, as the reduction amount was not unreasonably large.

I do not doubt that petitioner's son exerted his best efforts to assist his father. Petitioner's son asserts that respondent's failure to provide sufficient information resulted in his father's ineligibility. The *fairness* of the situation is in dispute. I note that, as a matter of law, I cannot grant the relief the petitioner seeks based on equity. It is the long-standing policy of the Division of Hearings & Appeals that the Department's Administrative Law Judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in state statutes and administrative code provisions.

Based upon the record before me, I am unable to find that the respondent incorrectly denied petitioner's application for Nursing Home Long-term care benefits due to assets exceeding MA institutional care program limits.

### **CONCLUSIONS OF LAW**

Respondent correctly denied petitioner's application for Nursing Home Long -term care benefits due to assets exceeding MA institutional care program limits.

**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 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).

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<sup>1</sup> Petitioner testified that, on September 25, 2012, he was instructed to complete things "as soon as possible." Exhibit 1

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 28th day of December, 2012

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\sPeter McCombs  
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 28, 2012.

Wood County Human Services - WI Rapids  
Division of Health Care Access and Accountability