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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

MGE/144703

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 12, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on November 27, 2012, at Madison, Wisconsin. At the time of the hearing, computers were down at the county. The county submitted written exhibits by fax following the hearing.

The issue for determination is whether the Department erred in terminating petitioner's EBD -Medicaid due to excess assets.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Dave Bernhardt

Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. On October 1, the Department mailed a Notice of Proof Needed to petitioner asking for certain verification documents pertaining to assets. The notice required the information be submitted by October 10, 2012.
3. Petitioner did not provide the requested information by the due date.
4. The Department terminated enrollment effective November 1, 2012.
5. The petitioner filed a timely appeal.

### **DISCUSSION**

At the time of the hearing, the Department did not provide any exhibits. Their computers were down. The Notice of Proof Needed was faxed to me following the hearing. It is unfortunate as if I had seen it at the hearing it would have been clear that the Department action was error.

The Medicaid Eligibility Handbook (MEH) provides directives to county agencies which set forth the agency and client responsibilities when processing an MA application or review. Applicants must verify financial information including assets. Wis. Admin. Code § DHS 102.03(3), MEH § 20.3.5. The county agency requested verification of assets by Notice of Proof Needed sent to petitioner on October 1, 2012. The Department specified that this information was to be provided by October 10, 2012.

The Department's own manual states that the Department agent must provide a minimum of ten days for a member to respond to a request for verification. MEH § 20.7.1. That did not happen here. The notice requesting the account information was issued on October 1. There is no indication in the record as to when it was received by petitioner. But, even using the issuance date, the Department only provided nine days until October 10 for the required response. In counting time for this purpose, one does not begin counting on the date of issuance. The counting must begin one day "after" the triggering event. See, e.g. Wis. Stat. § 801.15 ("the day of the act, event or default from which the designated period of time begins to run shall not be included"); see also Federal Rules of Civil Procedure Rule 6. So, the first day counted is the 30<sup>th</sup> of August. The day of the deadline was the 10<sup>th</sup> of October which was the 9<sup>th</sup> day after the date the notice was printed. The notice was invalid on its face and the action was error because it was based on a flawed notice.

Nothing in this Decision prohibits the Department from seeking the required verification once again, provided that the petitioner is given a period to respond that is in conformance with the Department's own rules.

### **CONCLUSIONS OF LAW**

The Department did not provide the required amount of time for a response to its request for documentation and thus, the notice was invalid on its face. The action termination based on the flawed notice was error.

**THEREFORE, it is**

**ORDERED**

The matter is remanded to the Department and its county agent with direction to reverse the termination of enrollment and apply retroactive coverage to November 1, 2012. These actions must be completed within ten days 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 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 13th day of December, 2012

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\sJohn 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 December 13, 2012.

Dane County Department of Human Services  
Division of Health Care Access and Accountability