



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FCP/145082

PRELIMINARY RECITALS

Pursuant to a petition filed November 8, 2012, under Wis. Admin. Code, §DHS 10.55, to review a decision by the Wood County Human Services in regard to the Family Care Program (FCP), a hearing was held on January 8, 2013, by telephone.

The issue for determination is whether petitioner was over the FCP asset limit in August, 2012.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Beulah Garcia
Wood County Human Services
P.O. Box 8095
Wisconsin Rapids, WI 54495-8095

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Wood County.
2. Petitioner applied for FCP on July 26, 2012, specifically requesting eligibility to begin September 1, 2012.
3. By a notice dated August 30, 2012, the agency found petitioner to be eligible for FCP effective September 1, 2012.

4. On August 20, 2012, petitioner's guardian made a payment to petitioner's adult family home, leaving a balance in petitioner's bank account of \$2,107.38.
5. Petitioner's representatives realized that petitioner's adult family home payment made in August was for July, 2012, and he still had a balance due for August. Petitioner's guardian asked the agency to review eligibility for August, but the agency denied FCP for August because the bank account balance was more than \$2,000.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

FCP, like regular Medical Assistance (MA), has an asset limit of \$2,000 for a one-person household. Wis. Stat., §46.286(1)(b)2m.a; Wis. Admin. Code, §DHS 10.34(2). In the past there was FCP eligibility for individuals "not eligible for" MA under Wis. Admin. Code, §DHS 10.34(3), but that eligibility status was discontinued July 1, 2008. See MA Handbook, Appendix 29.3.2.

The MA asset limit for an individual is \$2,000. Wis. Stat., §49.47(4)(b)3m. If assets are above that limit, the person is not eligible for MA. The statute does not allow for outstanding debts to be deducted from assets, nor does it provide any exceptions for unusual situations. In determining the value of a bank account in a given month, the agency does not count income received in that month. MA Handbook, Appendix 16.1.0.

In this case, as of the end of the day on August 31, 2012, petitioner's bank account, a non -exempt asset, had a balance of \$2,963.38. Petitioner's monthly social security of \$856 was subtracted, meaning that the lowest account balance in August was \$2,107.38 (the county calculated \$2,107.51, but there was a \$0.13 interest credit given on September 5).

The law and policy makes no provision for ignoring the asset limit. As noted, outstanding debts cannot be deducted, and there is no discretion given for unusual situations. While it is apparent that the failure to reduce the asset below \$2,000 prior to September 1 was an absolute error by the people helping petitioner, neither the local agency nor the Division of Hearings and Appeals has authority to grant an exception to the asset limit. I must conclude, therefore, that the agency's denial of FCP eligibility for August, 2012 was correct.

CONCLUSIONS OF LAW

Petitioner's assets were over the FCP limit in August, 2012, and thus FCP eligibility could not begin until September 1, 2012.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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).

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 14th day of January, 2013

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 14, 2013.

Wood County Human Services - WI Rapids
Office of Family Care Expansion