



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MOP/145948

PRELIMINARY RECITALS

Pursuant to a petition filed December 12, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dunn County Department of Human Services in regard to Medical Assistance, a hearing was held on January 23, 2013, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner received and must repay an overpayment of medical assistance as a result of not reporting that his wife entered the nursing home.

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: Paula Goodell

Dunn County Department of Human Services
808 Main Street
PO Box 470
Menomonie, WI 54751

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.

2. The petitioner has received institutional medical assistance under the spousal impoverishment provisions of the program since October 2011. All of assets have since been transferred to his wife.
3. The petitioner's spouse entered the nursing home on May 18, 2012. No one reported this to the county agency.
4. The county agency seeks to recover \$14,597.14 in medical assistance provided to the petitioner from July 1, 2012, through September 30, 2012.

DISCUSSION

The department "may" recover any overpayment of medical assistance that occurs because of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665 [BadgerCare].
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

Wis. Stat. § 49.497(1).

Institutionalized persons generally can retain only \$2,000 in assets and be eligible for medical assistance, but the federal Medicare Catastrophic Coverage Act of 1988 allows them to assign a portion of their assets to a spouse if that spouse remains in the community. Wis. Stat. §§ 49.47(3)(g)2 and 49.455(6). The petitioner has been receiving benefits under these provisions since October 2011. On May 18, 2012, his wife, who had been living in the community, also entered the nursing home. The agency contends that the assets that had been in her name were now counted against his asset limit, making him ineligible for benefits. Recipients must report any change of circumstances that affects their benefits to the agency within 10 days. Wis. Admin. Code, § DHS 104.02(6). Nobody reported this change on the petitioner's behalf. The agency now seeks to recover \$14,597.14 in medical assistance provided to him from July 1, 2012, through September 30, 2012.

The spousal impoverishment provisions only offer protection if there is a community spouse, which is defined as "an individual who is legally married as recognized under state law to an institutionalized spouse but is not himself or herself an institutionalized individual." Wis. Admin. Code, § DHS 103.075(3)(a). Once the petitioner's spouse entered the nursing she was no longer a "community spouse," and the financial protection offered by the spousal impoverishment provisions ended. This means that the petitioner's eligibility should have then been determined just as anyone else's was. Neither party disputes that if his eligibility was determined under normal rules, that because his assets exceeded \$2,000 he was ineligible. Because those acting on his behalf failed to report a change in his financial situation and eligibility characteristics that would have affected his eligibility for benefits, he is liable for repaying the overpayment he received; it does not matter if this was not done intentionally.

As I told the petitioner's daughter at the hearing, this decision has little practical effect on her. The nursing home has been paid, her father is and will continue to receive care, and she and her siblings are not personally responsible for repaying the overpayment. The agency can try to recover the overpayment

from her parents, but even if there had not been an overpayment, it could recover any benefits from their estate.

CONCLUSIONS OF LAW

The petitioner must repay an overpayment of medical assistance because the assets he transferred to his wife counted toward his limit after she entered the nursing home.

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).

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 4th day of February, 2013

\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 February 4, 2013.

Dunn County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability