



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MGE/146754

PRELIMINARY RECITALS

Pursuant to a petition filed January 18, 2013, 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 February 21, 2013, at New Richmond, Wisconsin.

The issue for determination is whether a trust and a money market account are assets available to the petitioner.

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: Angie McGoon

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 is a resident of St. Croix County.
2. The petitioner applied for medical assistance on August 1, 2012. The county agency denied his application on December 10, 2012, because his assets allegedly exceeded the program's limit.

3. The petitioner is disabled.
4. The petitioner's father used his assets to establish a trust for the petitioner on December 23, 1997. That trust currently has \$39,297.05 in assets. It limits what its resources can be used for and gives the trustee rather than the petitioner the authority to determine when those resources are spent.
5. The petitioner's brother has a money market account with \$7,199.18 in it. This is not the petitioner's asset. The petitioner has a checking account in his own name with \$1,639.93 in it. Both the petitioner and his brother are listed on a bank statement that covers both accounts. This is done for the convenience of the petitioner and his brother.

DISCUSSION

Those seeking medical assistance generally cannot have more than \$2,000 in available assets. Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. §§ 49.46(1) and 49.47(4). The agency denied the petitioner's application because it determined that he had over \$48,000 in available assets, including \$7,199.18 in a money market account and \$39,297 in a trust account. The petitioner disputes that those two assets should count against his asset limit. If they do not, the parties agree that he meets the program's asset limit. He seeks eligibility retroactive to October 2012. Both parties also agree that if he meets the asset limit, he is eligible back to that date.

The petitioner produced a letter from the bank indicating that the money market account was held solely by his brother. *Exhibit 2*. It is understandable that the county worker counted the account as the petitioner's asset because both his and his brother's names were listed at the top of the statement. The petitioner has his own smaller account at the bank that is listed in the same statement. Both names are listed as a convenience so that the petitioner's brother has access to the petitioner's financial information. The bank's letter together with petitioner's disability is sufficient to establish by the preponderance of the credible evidence that the assets in the money market account are not the petitioner's. Still, I suggest that the accounts be listed on separate statements, if this is possible, and that the petitioner's name be removed from his brother's statement to prevent future confusion. Both names could still be listed on the petitioner's account.

Section 49.454, Wis. Stats., determines when a trust is counted toward the asset limit. It applies in medical assistance matters "if assets of the individual or the individual's spouse were used to form all or part of the corpus of the trust" and the trust was set up by the individual, his spouse, or someone acting on the individual's behalf or request. Wis. Stat. § 49.454(1)(a). All revocable trusts covered by the statute are available; irrevocable trusts covered by the statute are available "[i]f there are circumstances under which payment from an irrevocable trust could be made to or for the benefit of the individual" seeking or receiving medical assistance. Wis. Stat. § 49.454(3)(a). This provision does not apply to trusts set up by others for the individual's benefit. Wis. Stat. § 49.454(1)(b) and (4).

The difference between trusts created by the individual seeking medical assistance and those created by a third party is explained in the *Medicaid Eligibility Handbook*, §§ 16.6.4.1. and 16.6.4.2. Section 16.6.4.1 states:

If the resources of someone other than the individual or their spouse (i.e. a third party), were used to form the principal of an irrevocable trust, the trust principal is not an available asset unless the terms of the trust permit the individual to require that the trustee distribute principal or income to him or her.

Section 16.6.4.2 states:

If the resources of the individual or the individual's spouse were used to form all or part of the principal of the trust, some or all of the trust principal and income may be considered a non-exempt asset, available to the individual. If there are any circumstances under which payment from the trust could be made to or for the benefit of the individual at any time no matter how distant, the portion of the principal from which, or the income on the principal from which, payment to the individual could be made shall be considered non-exempt assets, available to the individual.

The petitioner's father used his own funds to set up the trust in question for the petitioner 15 years ago. *Exhibit 1*. It was meant to supplement the petitioner's needs and specifically stated that it could not be used to pay for items covered by public assistance. Although there are circumstances under which the petitioner can receive funds from the trust, he cannot require the trustee to distribute principal or income to him; rather, this discretion rests with the trustee. Because the trust was set up with the funds of someone other than the petitioner, and he cannot require the trustee to distribute the trust's principal or interest to him, both Wis. Stat. § 49.454 and medical assistance policies found at *Medicaid Eligibility Handbook*, § 16.6.4, clearly exempt it as an asset when determining his eligibility. Because this asset is exempt and the money market account is not his, his assets are less than \$2,000. Thus, he is eligible for medical assistance, and, based upon the agreement of the parties, this eligibility is retroactive to October 1, 2012.

CONCLUSIONS OF LAW

1. The petitioner's special needs trust is not a countable asset when determining his eligibility for medical assistance.
2. The petitioner's assets do not exceed the medical assistance program's limit.
3. The petitioner is eligible for medical assistance retroactive to October 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 take all steps necessary to ensure that the petitioner is eligible for medical assistance retroactive to October 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 1st day of March, 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 March 1, 2013.

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