FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MGE/146922

PRELIMINARY RECITALS

Pursuant to a petition filed January 24, 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 the county agency correctly denied the petitioner's eligibility for medical assistance because he failed to verify his 2009 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: Angie Magoon
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 (CARES # [redacted]) resides in a nursing home in St. Croix County. His wife remains in the community.

2. The petitioner applied for medical assistance on August 1, 2012. The county agency denied his request on January 9, 2013, because his assets exceeded the program's limit. The petitioner seeks eligibility as of October 1, 2012.

3. The petitioner permanently entered the nursing home on August 13, 2012. He was also in the nursing home from May 8, 2012, through June 28, 2012, and from July 5, 2012, through August 8, 2012. He had previously been in a nursing home from March 3, 2009, through May 3, 2009.

4. On October 9, 2012, the Centralized Document Processing Unit requested that by October 18, 2012, the petitioner and his wife verify the deposits in their bank accounts from September 1, 2012, forward. The petitioner provided this information.

5. On December 14, 2012, the Department requested that the petitioner verify bank accounts and other assets he and his wife held while he was in a nursing home in 2009. He provided verification of his vehicle but could not provide verification of his bank information because his wife no longer had the records in their house and the bank had been sold and was unable to retrieve them.

6. As of September 29, 2012, the petitioner and his spouse had $49,194.25 in countable assets. This included $10,015.83 in a certificate of deposit, $25,693.81 in another certificate of deposit, $6,204.33 in a checking account, and $7,280.38 in a savings account.

DISCUSSION

The petitioner permanently entered the nursing home on August 13, 2012, but was also there from March 3, 2009, through May 3, 2009, and all but about two weeks between May 8, 2012, August 13, 2012. He applied for institutional medical assistance on August 1, 2012. This application was eventually denied on January 9, 2013. The denial notice indicates that the request was denied because his assets exceeded the program's $2,000 asset limit. *See* Wis. Admin. Code, § DHS 103.06(1)(a) and Wis. Stat. § 49.47(4)(b)3g for the asset limit. However, the worker indicated that the application was denied because the petitioner failed to verify the bank accounts he and his wife held when he was in a nursing home in 2009. His attorney indicated that this verification cannot be obtained because his wife no longer has the records and the bank has been sold and the successor institution cannot retrieve them.

The first point that needs to be made is that the $2,000 asset limit does not apply to the petitioner. The medical assistance program contains special spousal impoverishment provisions that increase this limit so that a person does not fall into poverty when her spouse becomes institutionalized. *See* Wis. Stat. § 49.455 and 42 U.S.C. § 13964-5. Generally, the spousal impoverishment provisions allow persons with under $100,00 in countable assets to transfer $50,000 of those assets to the community spouse. Wis. Stat. § 49.455(6)(b); *Medical Eligibility Handbook*, § 18.4.3. Up to a point, the amount that can be transferred increases as assets increase. Those with between $100,000 and $227,280 can transfer half of their assets, but no one can transfer more than $113,640. *Id.* Because the institutionalized spouse may retain an additional $2,000, any couple with one spouse still in the community can have up to $52,000 in assets and still have one of them eligible for benefits.

In October 2012, the Centralized Document Processing Unit requested that the petitioner and his spouse verify their current assets from September 1, 2012, forward. He did this, providing information that established that he and his wife had $49,194.25 in countable assets by the end of September 2012. However, when reviewing his application, the agency discovered his earlier nursing home stay. Agencies must "make an assessment of the total countable assets of the couple at the [b]eginning of the person's first continuous period of institutionalization of 30 days or more…" *Medicaid Eligibility Handbook,* 18.4.2. The petitioner provided information showing that he and his wife's assets were $43,000 in 2009 but, as mentioned earlier, could not verify their bank accounts. Because they have less than $52,000 in

assets, he meets the medical assistance limit. The only question remaining is whether the agency correctly denied his eligibility for failing to verify their 2009 assets.

Medicaid rules require recipients to verify assets. Wis. Admin. Code, § DHS 102.03(3)(h). According to Wis. Admin. Code, § DHS 102.03(1):

> An application for MA shall be denied when the applicant or recipient is able to produce required verifications but refuses or fails to do so….If the applicant or recipient is not able to produce verifications, or requires assistance to do so, the agency may not deny assistance but shall proceed immediately to verify the data elements

Agencies must allow at least 30 days from the date of application or 10 days from the date of the request, whichever is later, to verify the information. *Medicaid Eligibility Handbook,* § 20.7.1.1. *see also* Wis. Admin. Code § DHS 102.03(1). Medical assistance policy instructs when to approve or deny an application:

Begin or continue benefits when:

1. The member provides requested verification within the specified time limits and is otherwise eligible.
2. Requested verification is mandatory, but the member does not have the power to produce the verification and s/he is otherwise eligible

Deny or reduce benefits when all of the following are true:

1. The member has the power to produce the verification.
2. The time allowed to produce the verification has passed.
3. The member has been given adequate notice of the verification required.
4. You need the requested verification to determine current eligibility. Do not deny current eligibility because a member does not verify some past circumstance not affecting current eligibility.

Medicaid Eligibility Handbook, §§ 20.8.1. and 20.8.3.

The agency contends that it requires verification of the petitioner's 2009 assets because it needs to ensure that his wife receives the greatest allocation of the assets possible. For example, if they established that they had $200,000 in assets when he was institutionalized in 2009, his current asset limit would be $102,000 (one-half of $200,000 plus his own $2,000 limit) rather than $52,000. Because there is no request for any verification for the period he was out of the nursing home, it is clear that the agency is not attempting to determine if he or his wife gave away assets to become eligible for medical assistance, which would constitute a divestment and leave him ineligible for benefits. *See* Wis. Admin. Code, § DHS 103.065(4)(a) and (5)(b).

The agency's argument does not hold up in the context of the petitioner's current request for benefits. Because he and his wife now have less than $52,000 in assets, he is eligible for medical assistance under the spousal impoverishment provisions regardless of the amount of assets they had in 2009. Furthermore, the petitioner reported to the agency that those assets were $43,000 in 2009 and thus implicitly concedes that his spouse is not entitled to have more than $50,000 allotted to her. What the agency has done is deny the petitioner's current eligibility because he did not verify some past circumstance that has no effect on his current eligibility. This denial directly contradicts the instructions given to the agency in *Medicaid Eligibility Handbook,* § 20.8.3. Moreover, the petitioner has established that he cannot provide verification of the missing bank accounts that led to the denial, a point the agency has never disputed. Both the medical assistance policy found in the *Medicaid Eligibility Handbook,* § 20.8, and the regulation found at Wis. Admin. Code, § DHS 102.03(1), require the agency to find the petitioner eligible under

these circumstances. I will order that eligibility begin on October 1, 2012, the first date for which the petitioner seeks eligibility.

CONCLUSIONS OF LAW

1. The county agency incorrectly denied the petitioner's application for medical assistance on the grounds that he failed to verify his bank accounts as of 2009.
2. The petitioner's assets do not exceed the medical assistance asset limit.

THEREFORE, it is **ORDERED**

That this matter is remanded to the county agency with instructions that it find the petitioner eligible for institutional 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 3rd day of April, 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 April 3, 2013.

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