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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/147724

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 26, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Walworth County Department of Human Services in regard to Medical Assistance, a hearing was held on March 28, 2013, at Elkhorn, Wisconsin.

The issue for determination is whether respondent correctly determined that petitioner was over program asset limits during the period of July, 2012, through November, 2012.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Sandy Cross

Walworth County Department of Human Services  
W4051 County Rd NN  
Elkhorn, WI 53121-1006

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Walworth County.
2. An application for MA was filed on petitioner's behalf on September 4, 2012. Exhibit 2. The respondent reviewed petitioner's income and assets, and on September 12, requested verification

of certain items. Exhibit 3, By notice dated October 29, 2012, petitioner's application was denied due to failure to provide necessary verification and due to assets in excess of program limits. Exhibit 4.

3. A subsequent application for MA was filed on petitioner's behalf on December 4, 2012. Exhibit 5. By notice dated January 11, 2013, petitioner was determined to be eligible for institutional MA effective December 1, 2013. Exhibit 9.
4. Petitioner's guardian filed this appeal seeking backdated MA.
5. From July 1, 2012 through December, 12, 2012, petitioner held a life insurance policy with a face value greater than \$2,000.00. On December 12, 2012, petitioner was issued the cash surrender value of said policy, in the amount of \$3,170.22. Exhibit 7. At that point, petitioner's assets no longer exceeded \$2,000.00.

### DISCUSSION

A person cannot receive medical assistance if her available assets exceed \$2,000. Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. §§ 49.46(1) and 49.47(4). The regulation in Wis. Admin. Code, § DHS 103.06(10), provides the following instructions on determining whether a life insurance policy is considered an asset:

The cash value of a life insurance policy shall be considered an asset, except that for SSI-related persons it is an asset only when the total face value of all policies owned by the person exceeds \$1,500. In this subsection, "cash value" means the net amount of cash for which the policy could be surrendered after deducting any loans or liens against it, and "face value" means the dollar amount of the policy which is payable on death.

Similarly, the *Medicaid Eligibility Handbook*, § 16.7.5, which provides the policy interpreting this provision states:

Face value is the basic death benefit of the policy exclusive of dividend additions or additional amounts payable because of accidental death or under other special provisions. Cash value means the net amount of cash for which the policy could be surrendered after deducting any loans or liens against it.

Count the cash value of all life insurance policies. For persons age 65 or over, blind or disabled, count it only when the total face value of all policies owned by each person exceeds \$1,500. Do this calculation for each EBD person. In determining the face value, do not include any life insurance which has no cash value.

The petitioner's insurance policy had a cash value of \$3,170.22, which was disbursed to the petitioner on or about December 12, 2012. Exhibit 7. I cannot make petitioner eligible for MA prior to December 1, 2012. She clearly had assets above the MA limit during the period of July, 2012,<sup>1</sup> through November,

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<sup>1</sup> I note that any appeal of the denial of the September 4, 2012, application is untimely, as petitioner's Request for Fair Hearing was not filed until February 26, 2013. The appeal as it pertains to the December 12, 2012 application and January 1, 2013, notice was filed on the final possible date. MA backdating policy provides as follows:

#### 2.8.2 Backdated Eligibility

2012, and although she certainly had outstanding debts or bills, the MA program does not deduct debts from assets in determining MA eligibility.

While I empathize with petitioner's guardian's efforts to deal with this matter as expeditiously as possible, I cannot grant the relief the petitioner seeks based on equity or fairness. It is the long-standing policy of the Division of Hearings & Appeals that the Department's Administrative Law Judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in state statutes and administrative code provisions.

### **CONCLUSIONS OF LAW**

Petitioner's assets were above \$2,000 during the period of July, 2012, through November, 2012, but assets were reduced below the \$2,000 limit in December, 2012.

**THEREFORE, it is ORDERED**

That the petition for review 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).

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If certifying for retroactive Medicaid, do not go back further than the first of the month, three months prior to the application month. Certify the person for any backdate month in which s/he would have been eligible had s/he applied in that month.

*Medicaid Eligibility Handbook*, § 2.8. As such, even if petitioner had demonstrated appropriate divestment of assets, the earliest possible backdating properly the subject of this appeal would only extend to the first of September, 2012.

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 20th day of May, 2013

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\sPeter McCombs  
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 May 20, 2013.

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