



FH  
[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/147878

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 5, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Fond du Lac County Department of Social Services in regard to Medical Assistance, a hearing was held on April 18, 2013, by telephone.

The issues for determination are (1) whether petitioner's appeal was timely filed for MA eligibility prior to August 2012, and (2) whether the petitioner was ineligible for Institutional/Long-Term Care MA from August through November 2012, due to excess assets.

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: Deb Gohlke, ESS

Fond Du Lac County Department of Social Services  
87 Vincent Street  
Fond Du Lac, WI 54935-4595

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of a nursing home in Fond du Lac County.

2. The petitioner applied for MA on May 16, 2012. Verification was requested, but not received. The Department issued written notice of denial to the correct address on June 19, 2012. Exhibit 2.
3. The petitioner filed another MA application on July 13, 2012. A verification request was issued on July 20, with a due date of August 13, 2012. On August 20, 2012, the agency sent a written denial notice to the petitioner's correct address. The appeal deadline was identified in that notice as being within 45 days. Exhibit 5.
4. On November 26, 2012, the petitioner filed another Institutional/Long-Term Care MA application. It is possible to backdate this type of MA for up to three months preceding application, *if* the applicant met the nonfinancial and financial eligibility criteria during the preceding months. On January 23, 2013, the Department issued notice to the petitioner advising that he was eligible for Institutional MA beginning December 1, 2012. The notice also advised that he was not eligible for MA for October or November 2012, due to excess assets.
5. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on March 5, 2013.
6. On November 27, 2012, the Department correctly notified the petitioner that his "spousal impoverishment" MA asset limit was \$52,000. See Exhibit 6. The Department had not previously established the spousal impoverishment asset limit because it had not received verification of all of the couple's assets. For a non-spousal impoverishment Institutional MA case, the asset limit is \$2,000. The petitioner's available countable assets exceeded \$52,000 throughout August, September, October and November 2012.

## DISCUSSION

### I. THE APPEAL IS UNTIMELY REGARDING MA COVERAGE PRIOR TO AUGUST 2012.

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within **45** days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed *197* days after the date of the August 20, 2012 MA denial. Thus, it was untimely, and no jurisdiction exists for considering the merits of the August 20 denial.

### II. THE PETITIONER WAS NOT ELIGIBLE PRIOR TO DECEMBER 2012, DUE TO EXCESS ASSETS.

An applicant for Institutional/Elderly-Blind-Disabled MA has to satisfy nonfinancial and financial tests to be found eligible. The petitioner has passed the nonfinancial tests. The agency has concluded that he has not passed the asset test prior to December 2012. A single person cannot have nonexempt assets exceeding \$2,000. Wis. Stat. §49.47(4)(b)3g; *Medicaid Eligibility Handbook (MEH)*, § 39.4.1, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. A married person with a spouse in the community gets a special, higher asset limit set by statute, which in this case is \$52,000. Wis. Stat. § 49.455(5) & (6)(b).

The agency has established that the couple's countable assets (checking, savings account, annuity not in payout phase, etc.) totaled more than \$52,000 in the months preceding December 2012. That exceeds the limit. The petitioner did not supply documentation at hearing to show that his assets dropped below \$52,000 prior to a date in December 2012. Therefore, the best evidence available to me is that the assets

remained above the limit until at least December 1, 2012. The agency's denial of coverage for the three months prior to the November 26, 2012 application will therefore be upheld.

Although the petitioner was incurring nursing home bills prior to December, the MA statute does not allow me to consider the petitioner's "net equity" (assets versus unpaid bills). Rather the statute is a simple declaration that a person cannot have assets over the limit. For example, the \$2,000 individual asset limit language is as follows:

**(4) ELIGIBILITY.**

**(a) ...**

**(b)** Eligibility exists if the applicant's property, subject to the exclusion of any amounts under the ... federal Social Security Act, does not exceed the following:

**1.** Subject to par. (bc), a home and the land used and operated in connection therewith or in lieu thereof a manufactured home or mobile home if the home ...is used as the person's or his or her family's place of abode.

**2.** Household and personal possessions.

**2m.** One or more motor vehicles as specified in this subdivision.

...

**3.** For a person who is eligible under par. (a) 3. or 4., funds set aside to meet the burial ...

**3g.** Liquid assets for a single person limited to:

**a.** In 1985, \$1,600.

**b.** In 1986, \$1,700.

**c.** In 1987, \$1,800.

**d.** In 1988, \$1,900.

**e.** After December 31, 1988, \$2,000.

Wis. Stat. § 49.47(4)(b)3g [*emphasis added*]. This Division has issued decisions for over 25 years that always declare that asset "net equity" cannot be considered. Therefore, I cannot consider net equity here.

Finally, the petitioner complained that the county agency did not give him more direction as to how to become financially eligible for MA. Agency workers are instructed to gather information and then determine eligibility; they are explicitly told that they are not to function as financial advisors to applicants.

### CONCLUSIONS OF LAW

1. There is no jurisdiction to review MA eligibility for months prior to August 2012, as the appeal is untimely for that purpose.
2. The agency correctly declined to certify the petitioner for Institutional MA prior to December 2012, due to excess assets.

**THEREFORE, it is**

**ORDERED**

That the petition 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 19th day of April, 2013

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\sNancy J. Gagnon  
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 19, 2013.

Fond Du Lac County Department of Social Services  
Division of Health Care Access and Accountability