



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

MGE/148263

PRELIMINARY RECITALS

Pursuant to a petition filed March 23, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Polk County Department of Social Services in regard to Medical Assistance, a hearing was held on May 22, 2013, at Balsam Lake, Wisconsin. A hearing scheduled for April 17, 2013, was rescheduled at the petitioner's request.

The issue for determination is whether the county agency correctly determined the date that the petitioner became eligible for medical assistance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Nancy Randall
Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Polk County.

2. The petitioner is a nursing home resident. She applied for medical assistance three times. The exact dates of the applications and denials are disputable. The county agency found her eligible as of March 1, 2013.
3. The petitioner sold stock for \$7,236 in February 2013. She retained the funds from the sale until sometime in March 2013.
4. From October 2012 through March 2012, the petitioner had a life insurance policy whose cash surrender value is \$1,107.50
5. The petitioner has two checking accounts, #...[REDACTED] and #...[REDACTED]. After subtracting her social security \$820 social security check, the accounts had the following combined amounts:
 - a. October 2012: \$5,222.90
 - b. November 2012: \$3,166.98
 - c. December 2012: \$1,026.18
 - d. January 2013: \$1,025.63
 - e. February 2013: \$723.49

DISCUSSION

The petitioner is a nursing home resident who seeks medical assistance eligibility retroactive to October 1, 2013. The agency found her eligible as of March 1, 2013. 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). Eligibility begins “on the date on which all eligibility requirements were met, but no earlier than the first day of the month 3 months prior to the month of application.” Wis. Admin. Code § DHS 103.08(1). When retroactive benefits are requested, eligibility depends upon whether the assets exceeded the limit on the last day of the month. *Medicaid Eligibility Handbook*, § 2.8.2. When determining the countable assets, income not counted in the month it was received. *Medicaid Eligibility Handbook*, § 16.1. The cash surrender value of life insurance is a countable asset. Wis. Admin. Code, § DHS 103.06(10),

I note initially that the chronology of the applications and denials makes no sense to me. At the hearing, it was pointed out that the petitioner applied three times before being found eligible as of March 1, 2013. The agency did not have the notices and denials. I asked for them so that I could determine what applications did not have to be considered in this decision because its appeal of the denial had not been filed within 45 days as required by Wis. Admin. Code, § HA 3.05(3). The notices I have since received indicate that the petitioner applied on October 2, 2012, and was denied on February 11, 2013, reapplied on December 3, 2012, and was denied on December 20, 2012, and reapplied on December 3, 2012, (sic) and was denied on January 13, 2013. Why the first application was the last one denied and the December 3 application was denied twice, I do not know. Nor do I know exactly when the petitioner finally applied and was approved for benefits. Because she appealed within 45 days of the October 2 application, I will consider her request for benefits retroactive to October 1, 2013.

The petitioner’s primary dispute with the agency’s determination centers on some stock that she owned jointly with her son. The agency attempted to determine the value of that stock, but were unable to do so because it was not openly traded and the petitioner’s son refused to cooperate in determining its value. He sold the stock in February 2013 for \$7,236. The petitioner’s attorney contends that it should not be considered available while the petitioner held it because of its indeterminate value.

The attorney’s argument is irrelevant because the petitioner’s assets exceeded \$2,000 even without the value of the stock until she sold it, and after she sold it, her assets exceeded \$2,000 until she paid the

nursing home and moved the remaining proceeds into an exempt asset in March 2013. From October 2012 forward period, she has a life insurance policy with a cash surrender value of \$1,107.50. From October 2012 through the end of January 2013 her bank accounts totaled over \$1,000 every month; the amount in her bank accounts was determined after subtracting her \$820 social security check from the total. At the end of February 2013, her bank account and insurance cash surrender value were less than \$2,000, but she now had the money from the sale of the stock, which again brought her assets over \$2,000. As a result, the agency correctly determined that her eligibility for medical assistance began on March 1, 2013, the first month her assets fell below \$2,000.

CONCLUSIONS OF LAW

The county agency correctly determined that the petitioner was ineligible for medical assistance until March 2013 because her countable assets exceeded \$2,000 until that month.

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 14th day of June, 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 June 14, 2013.

Polk County Department of Social Services
Division of Health Care Access and Accountability