



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/150370

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 28, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on August 08, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner application for Medicaid was correctly denied due to assets in excess of program limits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Chris Sobczak

Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner applied for institutional Medicaid. The exact date of application is not on the hearing exhibits but was no later than May 2013. Backdating February 2013 was requested.

3. Petitioner's application was denied for the months of February through April 2013 because of assets in excess of Medicaid asset limits.
4. Petitioner is the owner of non-homestead real property in Shawano County. The property was listed for sale with a realtor in May 2013 making the asset exempt per *Medicaid Eligibility Handbook*, §16.9. It was listed for sale at \$29,500.00.
5. Petitioner was found eligible for institutional Medicaid as of May 1, 2013.
6. As of July 1, 2013 Petitioner has a zero patient liability amount, permitting repayment of her nursing home present a balanced for the months prior to her Medicaid eligibility.
7. Petitioner has no power of attorney for financial matters.

### DISCUSSION

The asset limit for a medically needy elderly, blind or disabled group of one is \$2000.00. *Medicaid Eligibility Handbook*, (MEH), §39.4.1. There are no exceptions to this asset limit though in some circumstances an asset can be considered to be unavailable. Those are as follows:

#### 16.2.1 Assets Availability Introduction

An asset is available when:

1. It can be sold, transferred, or disposed of by the owner or the owner's representative, and
2. The owner has a legal right to the money obtained from sale of the asset, and
3. The owner has the legal ability to make the money available for support and maintenance, and
4. The asset can be made available in less than 30 days.

Consider an asset as unavailable if:

1. The member lacks the ability to provide legal access to the assets, and
2. No one else can access the assets, and
3. A process has been started to get legal access to the assets.

or

When the owner or owner's representative documents that the asset will not be available for 30 days or more.

...

*MEH*, §16.2.1.

Petitioner's representative testified that Petitioner has no financial POA but needed some help from family to get the Shawano property listed and that help was not forthcoming. For example, she could not recall the exact address of the property. I cannot, however, find that this meets the standards above. Further, the Division of Hearings and Appeals that the Division does not possess equitable powers. *See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). The Division of Hearings and Appeals must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. It cannot ignore or adjust the asset limit nor can it create an alternative standard for availability. I have to conclude that Petitioner's application was correctly denied because Petitioner's assets exceeded the program asset limit.

As an aside, though there is an approximate arrearage at the nursing home in the amount of \$23,870.00, I do note that the effect of the denial of backdating is ameliorated here by the fact the Petitioner's cost of care has been reduced going forward to permit payment of the amount due the nursing home for the denied backdate period.

**CONCLUSIONS OF LAW**

That Petitioner's request for backdated Medicaid eligibility was correctly denied due to assets in excess of the program limit during the backdate period.

**Now therefore, it is ORDERED**

That this 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 Milwaukee,  
Wisconsin, this 6th day of September, 2013

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\sDavid D. Fleming  
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 September 6, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability