



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

In the Matter of

[REDACTED]
[REDACTED]
c/o Atty. Paul Sturgul
[REDACTED]
[REDACTED]

DECISION

MGE/150510

PRELIMINARY RECITALS

Pursuant to a petition filed July 09, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Chippewa County Department of Human Services in regard to Medical Assistance, a hearing was held on August 20, 2013, at Chippewa Falls, Wisconsin.

The issue for determination is whether an irrevocable trust set up for the petitioner’s benefit with funds from someone else is an available asset.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o Atty Paul Sturgul
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Paul A. Sturgul
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Kelly Goettl
Chippewa County Department of Human Services
711 N. Bridge Street
Chippewa Falls, WI 54729-1877

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Chippewa County.
2. On January 15, 2013, the petitioner’s mother set up a supplementary needs trust for him with her assets. There is more than \$7,080 in the trust.

3. The terms of the trust do not permit the petitioner to require the trustee to distribute principal or income to him.
4. The county agency denied the petitioner's request for Medicare Premium Assistance because it considered the trust available, which would put his assets over the program's limit.

DISCUSSION

Those seeking medical assistance cannot have more than \$2,000 in assets. Wis. Stat. § 49.47(4)(b3g.e). The agency denied the petitioner's application because it determined that a supplementary trust his mother set up for him with her assets earlier this year was an asset available to him. It is unclear how much is in the trust, but both parties agree that if the trust is counted he will be ineligible for benefits and if it is not counted he will be eligible.

Section 49.454, Wis. Stats., determines when a trust is counted toward the asset limit. It applies in medical assistance matters "if assets of the individual or the individual's spouse were used to form all or part of the corpus of the trust" and the trust was set up by the individual, his spouse, or someone acting on the individual's behalf or request. Wis. Stat. § 49.454(1)(a). All revocable trusts covered by the statute are available; irrevocable trusts covered by the statute are available "[i]f there are circumstances under which payment from an irrevocable trust could be made to or for the benefit of the individual" seeking or receiving medical assistance. Wis. Stat. § 49.454(3)(a).

The agency counted the trust toward the petitioner's asset limit, after consulting with the state Help Desk because there were circumstances under which the funds could be used for his benefit. The Help Desk determined that it was not a valid special needs trust because it does not provide that upon his death that the Medicaid program will receive any amount left in the trust that does not exceed what the program has paid on his behalf. See *Medicaid Eligibility Handbook*, § 16.6.5.

The special needs provisions are irrelevant because this is not a special needs trust. Those trusts are set up for a person's benefits with his own resources. The petitioner's funds were not used. Because his funds were not used, the provisions in Wis. Stat. § 49.454 allowing funds in the trust to count toward his asset limit do not apply. This means there is no statutory authority for counting the trust as an available asset when determining his eligibility for any medical assistance program. This interpretation is consistent with the Department's own official interpretation of Wis. Stat. § 49.454 described in the policy found at *Medicaid Eligibility Handbook*, § 16.6.4.1. It states:

If the resources of someone other than the individual or their spouse (i.e. a third party), were used to form the principal of an irrevocable trust, the trust principal is not an available asset unless the terms of the trust permit the individual to require that the trustee distribute principal or income to him or her.

The trust set up for the petitioner complies completely with this policy. Not only was it set up with someone else's resources, it contains no provision that permits him to require the trustee to distribute principal or income to him. It is not his asset, and it does not count toward his asset limit. He is eligible for medical assistance.

I note that the file does not contain the agency's denial letter, and I cannot find any documentation or testimony indicating when benefits should begin. I assume the parties can agree on a date for the commencement of benefits. If they cannot, the petitioner can file a new appeal on this issue.

I also note that I am aware that the petitioner's mother applied for medical assistance and was found eligible primarily because the assets used to set up her son's trust were not counted against her asset limit. Her eligibility and whether her action constitutes a divestment is not before me.

CONCLUSIONS OF LAW

1. The trust set up for the petitioner with his mother's assets is not available to him when determining his eligibility for any medical assistance program.
2. The petitioner is eligible for medical assistance because his assets do not exceed \$2,000.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it find the petitioner eligible for Medicare Premium Benefits retroactive to a date consistent with facts of this case.

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 13th day of September, 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 September 13, 2013.

Chippewa County Department of Human Services
Division of Health Care Access and Accountability
passtu@aol.com