



FH
[REDACTED]

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

In the Matter of

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

DECISION

MGE/151030

PRELIMINARY RECITALS

Pursuant to a petition filed July 29, 2013, under Wis. Stat., §49.45(5), to review a decision by the Brown County Human Services to deny Medical Assistance (MA), a hearing was held on August 22, 2013, by telephone.

The issue for determination is whether part of a burial trust had to be counted as an available asset.

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: [REDACTED]
Brown County Human Services
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. An application for nursing home MA was filed on petitioner's behalf on May 20, 2013. The application noted that petitioner had a burial trust. It started with \$2,500, and in February, 2013, another \$2,700 (the proceeds of a life insurance policy that was cashed in) had been deposited into it.

3. By a notice dated June 6, 2013, the county denied MA because the burial trust held \$5,200, and only \$2,500 was exempt, thus leaving assets above the \$2,000 MA limit.
4. On July 1, 2013, petitioner signed a contract with the funeral home that converted the \$2,700 into a separate casket trust. Since the separate trust was now exempt, the county determined that petitioner was eligible for MA effective July 1, 2013.

DISCUSSION

The MA asset limit for an individual is \$2,000. Wis. Stat., §49.47(4)(b)3g. If assets are above that limit, the person is not eligible for MA. The statute does not allow for outstanding debts to be deducted from assets, nor does it provide any exceptions for unusual situations.

The MA Handbook, Appendix 16.5.1 provides that burial trusts are exempt up to \$3,000. Any part of a burial trust above \$3,000 is considered an available asset. In addition, Appendix 16.5.4 exempts burial spaces, including caskets, with no limit. Those provisions are based upon Wisconsin law. Wis. Stat., §445.125(1)(a)2 allows for irrevocable burial agreements up to \$3,000. However, Wis. Stat., §701.12(1) provides that any part of a burial trust above \$3,000 can be revoked even if the document says it is irrevocable. Thus, because any amount above \$3,000 can be revoked, that amount can be considered available to the person.

In this case petitioner's representatives intended to make the \$2,700 life insurance proceeds part of petitioner's irrevocable burial assets. However, mistakenly they simply put the money into the burial trust, and thus by law \$2,200 of that amount had to be considered available. Added to petitioner's \$1,500 bank account it left her some \$1,700 over the asset limit until July 1, 2013, when the \$2,700 portion was transferred to a casket trust.

I note here that the county considered only the first \$2,500 of the burial fund to be exempt when it should have exempted \$3,000. The result remains the same as petitioner's assets were above the limit anyway until July 1, 2013.

In the end the Division of Hearings and Appeals lacks authority to provide petitioner a remedy. Under the law her assets were above the limit until July 1, 2013. The intent of the transfer into the burial fund does not matter; legally that \$2,200 was available to petitioner until July 1. The situation is no different than one where the person intends to pay a bill that would eat up the funds; until the bill is paid the funds are available for MA purposes. I must conclude, therefore, that petitioner was ineligible for MA until July 1, 2013.

CONCLUSIONS OF LAW

Petitioner's assets were above the MA limit prior to July 1, 2013 because she had an irrevocable burial trust with a balance of \$5,200 until that date, and only \$3,000 of the trust is exempt for MA purposes.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same 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).

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 11th day of September, 2013

\sBrian C. Schneider
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 11, 2013.

Brown County Human Services
Division of Health Care Access and Accountability