



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAP/151077

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Dunn County Department of Human Services in regard to Medical Assistance, a hearing was held on September 18, 2013, at Menomonie, Wisconsin.

The issue for determination is whether the petitioner’s assets are within the limit for the Medical Assistance Purchase Plan.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Peter Grosskopf
1324 West Clairemont Ave Suite 10
Eau Claire, WI 54701

Respondent:

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

By: No Appearance

Dunn County Department of Human Services
808 Main Street
PO Box 470
Menomonie, WI 54751

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Dunn County.
2. The petitioner was injured in a work-related accident in 2009.

3. The petitioner received a workers' compensation settlement. This settlement included \$13,233.21 he received on April 25, 2013, to fund a Medicare Set Aside Account.
4. The Medicare Set Aside Account has been the petitioner's only available asset since June 2013.
5. The county agency ended the petitioner's Medical Assistance Purchase Plan benefits as of June 1, 2013. He seeks to have them reinstated retroactive to that date.

DISCUSSION

The petitioner is disabled and received benefits under the Medical Assistance Purchase Plan, which allows disabled persons who wish to work to receive medical assistance. Recipients cannot have more than \$15,000 in countable assets. Wis. Stat. § 49.472(3)(b). The petitioner had been receiving benefits under this program, but his benefits ended on June 1, 2013. It is unclear exactly what happened because the agency did not submit a denial notice or any other documentation before the hearing and did not appear at the hearing—although it did submit a letter explaining its position after the hearing. As a result, at the hearing, I was aware of only the petitioner's version of the reason for the denial.

He contends that the agency ended his benefits because it counted a \$13,233.21 Medicare Set Aside Account established on April 25, 2013, as part of a workers' compensation settlement. These accounts pay medical bills that would otherwise be paid by Medicare. Under 42 C.F.R § 411.46, once they are set up, Medicare will not pay for any medical costs related to the injury that led to workers' compensation settlement until the fund is exhausted. When determining medical assistance eligibility, agencies cannot count assets excluded by 42 USC 1382b(a) or included in "an independence account." Wis. Stat. § 49.472(3)(b). Medical assistance policy exempts segregated assets "set aside to carry out an approved self-support plan." *Medicaid Eligibility Handbook*, § 16.7.19. A self-support plan "allows a handicapped person to receive income and accumulate resources for training or purchasing equipment necessary for self support." *Medicaid Eligibility Handbook*, § 15.7.2.2. Nothing in those provisions specifically relates to the petitioner's set-aside account. The federal statute exempts homestead property, a car, burial trusts, and resources set aside to achieve self-support. The money the petitioner set aside to pay for future medical bills does not neatly fall into any of these categories, including the category of resources set aside to achieve self support. Self-support resources would generally be used to purchase tools used in a trade or some other item that allowed a disabled person to earn a living.

One could argue that Medicare Set Aside Accounts are exempt under the general medical assistance principle that an asset must be available to be counted. But whether the account is or is not exempt, the letter submitted by the agency after the hearing indicates that the basis of its denial was not the Medicare Set Aside Account but rather a possible divestment, which occurs if a person seeking or receiving medical assistance reaches the program's asset limit by disposing resources for less than their fair market value. Wis. Admin. Code, § DHS 103.065(4)(a). The agency contends that the petitioner received \$50,000 as a workers' compensation settlement in addition to the money placed in the set-aside account. The agency concedes that that money was all gone by sometime in June 2013, but it wants to know what happened to it. It states that it asked that he verify the information as required by Wis. Admin. Code, § DHS 102.03(3), and that the denial occurred when he failed to do so.

The agency's concerns are legitimate, but because it did not appear, it did not present any evidence to support its claims. If it had submitted documentation before the hearing, I could have been aware of its concerns and questioned the petitioner about them at the hearing. There is no other evidence that he divested money—or even that he had \$50,000 to divest. Nor is there any evidence that he was asked to verify his assets. I must base my decision on the evidence before me. The only evidence concerning any asset the petitioner might have had was the \$13,233.21 in the set-aside account. Because account held less than the Medical Assistance Purchase Plan's \$15,000 asset limit, he is financially eligible for those benefits regardless of whether that asset is counted. Medical assistance eligibility can be made retroactive

to “the first day of the month 3 months prior to the month of application.” Wis. Admin. Code § DHS 103.08(1). As noted the agency submitted no documentation, so there is no absolute proof of when the petitioner applied. He contends that it was on August 1, 2013. Because there is no other evidence concerning this, I accept his statement. The agency concedes in its letter that his assets were below \$15,000 in June. Because June is within three months of August, I will order that his benefits be reinstated retroactive to June 1, 2013.

CONCLUSIONS OF LAW

The petitioner was eligible for medical assistance as of June 1, 2013, because that is the first day of the month that his assets fell below \$15,000.

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 reinstate the petitioner into the Medical Assistance Purchase Plan retroactive to June 1, 2013.

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 October, 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 October 11, 2013.

Dunn County Department of Human Services
Division of Health Care Access and Accountability
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