



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

In the Matter of

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

DECISION

FCP/151259

PRELIMINARY RECITALS

Pursuant to a petition filed August 07, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Polk County Department of Social Services in regard to Medical Assistance, a hearing was held on September 18, 2013, at Balsam Lake, Wisconsin.

The issue for determination is whether the county agency correctly denied medical assistance to the petitioner when her husband refused to verify his assets.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

Attorney Jennifer A. O'Neill
900 Crest View Drive Suite 220
Hudson, WI 54016

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 and her husband are both in a nursing home.

3. The petitioner most recently applied for Family Care Medical Assistance on June 27, 2013.
4. The county agency requested that she verify various assets, including those held by her husband.
5. The petitioner's husband refuses to verify his assets.
6. The petitioner seeks to be considered for medical assistance as a single person.

DISCUSSION

Medical assistance rules require applicants to verify various information, including assets. Wis. Admin. Code, § DHS 102.03(3)(h). Agencies may deny applications if an applicant "is able to produce required verifications but refuses or fails to do so." within 10 days of the date they are requested..." *Medicaid Eligibility Handbook*, § 20.7.1.1. *see also* Wis. Admin. Code § DHS 102.03(1). Section DHS 102.02 states: "If a person refuses to provide information necessary for the determination of eligibility, all persons whose eligibility depends upon the withheld information shall be denied eligibility." A person in a two-person household cannot receive medical assistance if her household's non-exempt liquid assets exceed \$3,000. Wis. Stat. § 49.47(4)(b)3m.e.

The petitioner and her husband both live in a nursing home. She has filed at least three applications for Family Care Medical Assistance. The county agency has denied each because her husband has refused to verify his income. In her last application she requested that she be treated as a single person. Her attorney, Jennifer O'Neill, wrote in the request for a fair hearing, "The treatment of a married individual as a single person is commonly known as 'spousal refusal' and is well-recognized in Wisconsin." *Jennifer A. O'Neill letter to Division of Hearings and Appeals dated August 7, 2013*. When I asked Ms. O'Neill to provide legal authority for her position, she stated she had no specific authority. I am unaware of any authority, specific or general, for her position.

The petitioner's eligibility depends upon her total household assets. This means that her eligibility depends upon the evidence her husband is withholding. Allowing one to file separately whenever a spouse refused to verify information would encourage such refusals and make the requirement that the husband and wife's combined assets not exceed \$3,000 meaningless. Moreover, the petitioner can produce the required verification because the Wisconsin Marital Property Act provides her a means of obtaining the missing information. It states: "Upon request of a spouse, a court may order an accounting of the spouses' property and obligations and may determine rights of ownership in, beneficial enjoyment of or access to marital property and the classification of all property of the spouses." Wis. Stat. § 766.70(2). The agency correctly denied her application for medical assistance because she failed to verify information needed to determine her eligibility, and she is able to produce that information.

CONCLUSIONS OF LAW

The county agency correctly denied the petitioner's application for medical assistance because by not verifying her husband's assets she failed to verify information needed to determine her eligibility, and she is able to produce that information.

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 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

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 11, 2013.

Polk County Department of Social Services
Office of Family Care Expansion
jennifer@oneillelderlaw.com