FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MGE/151801

PRELIMINARY RECITALS

Pursuant to a petition filed September 03, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Fond Du Lac County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on October 21, 2013, at Fond Du Lac, Wisconsin. At the request of the parties, the record was held open for the submission of closing arguments to DHA. Both parties timely submitted their arguments to DHA which are received into the hearing record.

The issue for determination is the county agency correctly denied the petitioner's May 31, 2013 Institutional MA application due to not timely providing all required asset verification and assets above the MA asset eligibility limits based upon the asset information provided.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Representative:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Deborah Bohlman, ESS
Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Fond Du Lac County who entered a nursing home on January 26, 2013 due to a major stroke which left her disabled. The petitioner's husband, [redacted], resides in the community.

2. The petitioner's nursing home costs were covered under her husband's health insurance policy and Medicare.

3. The petitioner faxed to the county agency a May 31, 2013 Institutional MA application requesting a three month backdate. See Exhibit 1.

4. The county agency sent a June 27, 2013 verification request to the petitioner requesting that petitioner verify her income and all assets by July 8, 2013 retroactive to the requested backdate period back to February, 2013 under spousal impoverishment rules. That verification request listed all the assets requiring verification of which the county agency was aware. See Exhibit 3.

5. Spousal Impoverishment rules require verification of all assets for an asset test and the determination of the community spouse asset share (the amount above $2,000 that a couple can possess and still be eligible for MA Nursing Home Care).

6. The petitioner requested an extension of the verification deadline due to petitioner's extensive list of assets, and the county on July 2, 2013 extended the verification deadline to July 15, 2013.

7. The county agency received about 90 pages of asset verification on July 12, 2013, but petitioner did not verify with reliable information all of petitioner's assets.

8. The county agency sent a July 18, 2013 Notice of Decision to the petitioner stating that petitioner's Institutional MA application was denied for two reasons: a) petitioner failed to timely verify all her assets; and b) the county agency determined (based upon available reliable information) that petitioner's countable assets were above the MA asset limit during the months of February, 2013 (assets of $105,283.30), March, 2013 (assets of $106,047.32); and c) April, 2013 (assets of $112,048.27).

9. The county agency established that the following assets of petitioner were not verified until about September 17, 2013: a) the value and ownership of accounts at Golden Rule for February through May, 2013 (Exhibit 3); and b) the value of IRAs at H & R Block for February through May, 2013 due to unreliable, insufficient information provided.

10. On July 5, 2013, petitioner left the nursing home and returned to her home where she received home care services. She was then no longer eligible for Nursing Home Care as of August, 2013.

11. On July 22, 2013, the county agency prepared a detailed spreadsheet for the petitioner listing all of petitioner's assets, and what remained unverified or questionable by the county agency.

12. Based upon asset verifications submitted about September 13, 2013, petitioner's community spousal asset share was $52,000. The petitioner had assets **above $52,000** for the months of May, June, and July, 2013. Petitioner's nursing home non-financial eligibility ended during July, 2013, when she returned to her home on July 5, 2013 for home care services. See Exhibit 12.

13. During the October 21, 2013 hearing and his written closing argument, petitioner's representative made multiple equitable arguments as to assets of petitioner that could have been sold (i.e. paid down her mortgage), if petitioner had been aware of how much her assets needed to be reduced to become MA asset eligible under spousal impoverishment.

DISCUSSION

The petitioner entered the nursing home on January 26, 2013 after hospitalization at St. Agnes Hospital on January 19, 2013, after suffering a major stroke. During March, 2013, petitioner and her husband requested their son-in-law, [redacted] [redacted], to assist petitioner in reviewing petitioner's hospital, doctor, dialysis, and nursing home bills. On behalf of petitioner, Mr. [redacted] applied for Institutional Medical Assistance for the petitioner on May 31, 2013. This application was eventually denied on July 18, 2013. The denial notice indicates that the request was denied because her assets exceeded the program's asset eligibility limit and failure to timely verify all assets of the petitioner. See Finding of Fact #8 above. *See* Wis. Admin. Code, § DHS 103.06(1)(a) and Wis. Stat. § 49.47(4)(b)3g. ESS Bohlman testified in detail that the petitioner's MA application was denied because the petitioner failed to timely verify all the many, many assets that petitioner and her husband owned.

The first point that needs to be made is that the $2,000 asset limit does not apply to the petitioner. The medical assistance program contains special spousal impoverishment provisions that increase this limit so that a person does not fall into poverty when her spouse becomes institutionalized. *See* Wis. Stat. § 49.455 and 42 U.S.C. § 13964-5. Generally, the spousal impoverishment provisions allow persons with under $100,00 in countable assets to transfer $50,000 of those assets to the community spouse. Wis. Stat. § 49.455(6)(b); *Medical Eligibility Handbook*, § 18.4.3. Up to a point, the amount that can be transferred increases as assets increase. Those with between $100,000 and $227,280 can transfer half of their assets, but no one can transfer more than $113,640. *Id.* Because the institutionalized spouse may retain an additional $2,000, any couple with one spouse still in the community can have up to $52,000 in assets and still have one of them eligible for benefits.

The county agency correctly requested that the petitioner and her spouse verify all their assets from February, 2013 through July, 2013. County agencies must "make an assessment of the total countable assets of the couple at the [b]eginning of the person's first continuous period of institutionalization of 30 days or more…" *Medicaid Eligibility Handbook,* 18.4.2. The petitioner's representative submitted some reliable information to the county agency, but not all the required verification that was needed. See above Findings of Fact.

Medicaid rules require recipients to verify assets. Wis. Admin. Code, § DHS 102.03(3)(h). According to Wis. Admin. Code, § DHS 102.03(1):

> An application for MA shall be denied when the applicant or recipient is able to produce required verifications but refuses or fails to do so….If the applicant or recipient is not able to produce verifications, or requires assistance to do so, the agency may not deny assistance but shall proceed immediately to verify the data elements

Agencies must allow at least 30 days from the date of application or 10 days from the date of the request, whichever is later, to verify the information. *Medicaid Eligibility Handbook,* § 20.7.1.1. *see also* Wis. Admin. Code § DHS 102.03(1). Medical assistance policy instructs when to approve or deny an application:

Begin or continue benefits when:

1. The member provides requested verification within the specified time limits and is otherwise eligible.
2. Requested verification is mandatory, but the member does not have the power to produce the verification and s/he is otherwise eligible

Deny or reduce benefits when all of the following are true:

1. The member has the power to produce the verification.
2. The time allowed to produce the verification has passed.
3. The member has been given adequate notice of the verification required.
4. You need the requested verification to determine current eligibility. Do not deny current eligibility because a member does not verify some past circumstance not affecting current eligibility.

Medicaid Eligibility Handbook, §§ 20.8.1. and 20.8.3.

The agency representative testified that it requires verification of all of the petitioner's large number of assets to determine the petitioner's asset eligibility retroactive to February, 2013. For example, if they established that they had $200,000 in assets when she was institutionalized her current asset limit would be $102,000 (one-half of $200,000 plus her own $2,000 limit) rather than $52,000. The record does not indicate there was any request for any verification prior to February, 2013, and thus the agency was not attempting to determine if petitioner or her husband gave away assets to become eligible for medical assistance, which would have constituted a divestment and such divestment would have resulted in ineligibility for benefits. *See* Wis. Admin. Code, § DHS 103.065(4)(a) and (5)(b).

During the October 21, 2013 hearing and in her November 4, 2013 closing argument, ESS Deb Bohlman presented convincing, detailed testimony and evidence that the county agency correctly denied the petitioner's May 31, 2013 Institutional MA application. She testified that as of the July 15, 2013 extended verification date, the county agency determined that petitioner had a "community spouse asset share" (csas) of $54,641.15 based upon the reliable verification submitted to the county agency at that time. She further asserted that while about 90 pages of information were submitted by July 15, 2013, those papers did not fulfill all verification requirements. In her November 4, 2013 closing argument, Ms. Bohlman stated in pertinent part:

> Verification of the value and ownership of accounts at Golden Rule for February through May 2013 was requested for [redacted] and [redacted]. (exhibit 3). The verification submitted for this was screen prints from accounts at Golden Rule. The only identifier on the screen prints is the last digits of each account number. There is no account holder name on the screen prints to verify ownership (exhibit 5). The agency cannot enter this as asset verification without proof the accounts are owned by [redacted], or [redacted] or both.
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> Verification of the value of IRAs at H & R Block for February through May 2013 was requested for [redacted] and [redacted] (exhibit 3). The verification submitted for this was a typed document listing values, a 12/31/2010 statement for [redacted], and screen prints from the H & R web site with no names to identify account holders (exhibit 5). The agency cannot enter this as asset verification without proof the account are owned by either [redacted] or [redacted].

The county agency established that all assets were not verified until September 13, 2013 and that the community spouse asset share (csas) could not calculated or asset eligibility determined until such csas was completed on September 17, 2013. Based upon the September 17, 2013, petitioner's asset limit was $52,000. The petitioner and her husband had assets in excess of $52,000 during May, June, July 2013. See Exhibit 12. Because petitioner returned home on July 5, 2013, she was no longer non-financially eligible for Institutional MA benefits.

During the October 21, 2013 hearing and his written closing argument, petitioner's representative primary equitable argument was that assets of petitioner could have been sold (i.e. paid down her mortgage), if petitioner had been aware of how much her assets needed to be reduced to become MA asset eligible under spousal impoverishment. However, Ms. Bohlman responded that the amount of the "spend down" needed could not be determined by the county agency without knowing the value of all of the applicant's assets. In this case, Ms. Bohlman correctly asserted that the value of petitoner's total assets was not known until after the petitioner was no longer non-financially eligible for Nursing Home Care (July 5, 2013) making her unable to gain eligibility through changes in her assets.

Mr. [redacted] also presented arguments as to why the denial of petitioner's Institutional MA application was unfair, and alleged there were unnecessary delays and lack of full cooperation by the county agency in processing petitioner's MA application. However, the record is uncontested that petitioner and her husband had an unusually large number of assets (Mr. [redacted] submitted 90 pages of asset verification to the county agency), thus it was understandable that the county agency needed a significant amount of time to verify all those assets and determine petitioner's asset eligibility limit.

In any case, as an Administrative Law Judge (ALJ), I lack the equitable powers to grant the relief sought. See Oneida County v. Converse, 180 Wis.2nd 120, 125, 508 N.W.2d 416 (1993). Beyond the legal allowances, petitioner's representative's argument is an equitable argument – a fairness argument- and I lack the equitable powers to grant the relief sought. See Oneida County v. Converse, 180 Wis.2nd 120, 125, 508 N.W.2d 416 (1993). The law is clear that a person with more than assets above the spousal impoverishment asset eligibility limits must be found ineligible for MA. Accordingly, based upon the above, I must conclude that the county's correctly denied the petitioner's May 31, 2013 Institutional MA application due to not timely providing all required asset verification and assets above the MA asset eligibility limits.

CONCLUSIONS OF LAW

The county agency correctly denied the petitioner's May 31, 2013 Institutional MA application due to not timely providing all required asset verification, and assets above the spousal impoverishment MA asset eligibility limits.

THEREFORE, it is **ORDERED**

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, Room 651, 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 December, 2013

_____

\sGary M. Wolkstein
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 December 13, 2013.

Fond Du Lac County Department of Social Services
Division of Health Care Access and Accountability