



FH  
[REDACTED]

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

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In the Matter of

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

DECISION

FCP/152397

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 27, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Washington County Department of Social Services in regard to Medical Assistance/Family Care (FC) eligibility, a hearing was held on November 6, 2013, by telephone. With the petitioner's consent, the hearing record was held open for submission of a real estate valuation document, which was received.

The issue for determination is whether the Department correctly sought to discontinue the petitioner's eligibility effective October 1, 2013.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
By: [REDACTED], guardian  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Mary Grell, ES Supervisor  
Washington County Department of Social Services  
333 E. Washington Street  
Suite 3100  
[REDACTED], WI 53095

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of a Wisconsin nursing home.
2. Prior to October 2013, the petitioner was receiving Institutional MA and FC program benefits. Her case was due for an annual review in September 2013. She timely commenced that review on August 28, and reported the existence of a previously unreported life insurance policy and a status change regarding her home at [REDACTED], [REDACTED], Wisconsin. The agency issued a written verification request on September 3, 2013, regarding the life insurance policy and the [REDACTED] home's value.
3. On September 13, 2013, the petitioner advised the agency that she was awaiting requested verification of the life insurance policy from its issuer, Prudential. Her guardian also advised that the home was in foreclosure, with a verified amount still owing of \$77,759.87. On September 26, the agency received documentation of the life insurance policy's \$662.48 cash value.
4. The agency has valued the home's net equity at \$45,540.13 (\$123,300 tax assessment value - \$77,759.87 mortgage). The date of the last tax assessment evaluation is undocumented in this record. The agency suggested to the petitioner that she obtain and submit an appraisal of the property to the agency if the potential sale price of the property was less than \$123,300; the petitioner asserts that she cannot afford an independent appraisal.
5. On September 16, 2013, the agency issued written notice to the petitioner advising that her FC was being discontinued effective October 1, 2013. The bases for discontinuance were (1) failure to supply requested verification, and (2) excess assets. The petitioner timely appealed, and the case has remained open pending appeal.
6. Due to the poor condition of her property, the petitioner attempted to give her mortgage lender a Deed in Lieu of Foreclosure; the lender declined. The petitioner's [REDACTED] property is the subject of a foreclosure action. See, in CCAP, [REDACTED] v. [REDACTED] M. [REDACTED], Washington Co. Circuit Court, Case no. [REDACTED], filed July 19, 2013. Her guardian testified that the petitioner does not have the means to pay off the amount owed on the property, and that she has ceased making mortgage payments, which means that the foreclosure will be successful.
7. Realtor [REDACTED] [REDACTED], FirstWeber Realty-[REDACTED], recommended a sale price for the property of \$68,000 in November 2012. Realtor [REDACTED] provided an updated recommended sale price for the property of \$75,000 on November 7, 2013. The change was due to the rising prices for comparable sold properties. The property is a three-bedroom, 1,348 square foot ranch built in 1952.

### DISCUSSION

The agency asserts that the petitioner is over the \$2,000 non-exempt asset limit for a single person on MA/FC. For FC, assets are evaluated in the same manner as they are for MA. The asset that puts her over the limit is the imputed \$45,540 net equity value (market value minus mortgage) of her former residence. Because the petitioner is not able to return to her residence, the agency relied on the following policy language for inclusion of the net value of the property:

#### **16.9 NON-HOME PROPERTY EXCLUSIONS**

Non-home property is any countable asset other than a [homestead](#) . See [17.4 Exceptions](#) for divestment. Exclusions of non-home property in EBD cases include:

1. **Real property** that is listed for sale with a realtor at a price consistent with its **fair market value**.
2. Property excluded regardless of value or rate of return. Property used in a trade or business is in this category. See [15.6.3.1 Business Assets](#).
3. Property excluded up to \$6,000, regardless of rate of return. This category includes non-business property used to produce goods or services essential to self-support. Any portion of the property's equity value in excess of \$6,000 is not excluded.

Non-business property essential to self-support can be real or personal property. It produces goods or services essential to self-support when it is used, for example, to grow produce or livestock solely for personal consumption, or to perform activities essential to the production of food solely for home consumption.

4. Property excluded up to \$6,000 if it is non-business property that produces a net annual income (either cash or in-kind income) of at least 6%.

*Medicaid Eligibility Handbook*, § 16.9, at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. See also, § 16.6.2, for the policy requirement that the property be listed for sale with a realtor to be exempt.

If a property is not exempt, it must be assigned a value. The agency views the fair market value of the property as its assessed value, from which the mortgage balance is subtracted to determine the amount of the available asset.

The petitioner has not provided evidence of a current listing contract, which would render the property exempt. The petitioner has also not provided a court foreclosure document *containing language barring sale of the property by the petitioner* (an admittedly unlikely event). She has instead chosen to alternatively argue that the net value of the property is zero. The agency relied upon the city's assessed value of the property, which is a standard practice. The agency also suggested that the petitioner could submit a professional appraisal, which the petitioner did not do, citing cost. Neither the city nor I can just take someone's word for it that a property has a fair market value that is \$48,000 under its assessed value.

At hearing, the guardian expressed a willingness to submit a realtor's evaluation of the property's value. He explained that he did not provide this documentation sooner because he thought that the agency would only accept an independent appraisal. There is an email "string" in the record wherein he is repeatedly asked for an "appraisal," which apparently caused confusion between the parties (although the agency supervisor did issue a clarifying instruction on October 21, after the intended discontinuance date). In any event, the guardian did provide an adequate realtor property evaluation within the allowed ten days post-hearing. I am satisfied that the fair market value of the property is \$75,000. After subtraction of the mortgage balance, the equity value of the asset is zero. Thus, the petitioner does not have assets exceeding the \$2,000 limit.

### **CONCLUSIONS OF LAW**

1. The petitioner's non-exempt assets did not exceed the \$2,000 asset limit from October 1, 2013, through the present time.
2. The petitioner remained financially eligible for MA/FC from October 1, 2013, to the present time.

**THEREFORE, it is**

**ORDERED**

That the petition is *remanded* to the agency with instructions to redetermine the petitioner's MA/FC eligibility from October 1, 2013 forward, in accord with the Conclusions of Law above. This action shall be taken within 10 days of the date of this Decision.

**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 18th day of December, 2013

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\sNancy J. Gagnon  
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 18, 2013.

Washington County Department of Social Services  
Office of Family Care Expansion