



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

In the Matter of

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

DECISION

MGE/152631

PRELIMINARY RECITALS

Pursuant to a petition filed October 04, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance, a hearing was held on November 11, 2013, at Neenah, Wisconsin.

The issues for determination are whether the petition for review is timely as a matter of law.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Leslie Vosters

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner applied for MA benefits in July of 2013, seeking backdated eligibility for the months of April, May, and June, 2013.

3. Via a notice of decision dated August 14, 2013, petitioner's application was denied, in part, due to assets in excess of program limits in April, May, and June of 2013. That notice also indicated that petitioner would not be eligible from July 1, 2013 through July 26, 2013, due to application of a divestment period. Page 3 of the notice informed petitioner that she could appeal that decision within 45 days following the effective date. Exhibit 4.
4. Petitioner subsequently filed a request for an Undue Hardship waiver, which was denied by the respondent via written notice dated September 5, 2013. Page 3 of the notice informed petitioner that she could appeal that decision within 45 days following the effective date. Exhibit 4.
5. Petitioner filed the instant appeal on October 4, 2013.

DISCUSSION

Medical assistance recipients must appeal negative decisions within 45 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Admin. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it. The county agency denied the petitioner's request for back-dated MA benefits on August 15, 2013. At that time, the respondent also notified petitioner of the imposition of a divestment penalty covering the period of July 1, 2013 through July 26, 2013. 45 days following the date of that notice was September 29, 2013. Petitioner did not appeal until October 4, 2013, or 51 days later. Because her appeal is late as to those issues, I must dismiss them.

The denial of the Undue Hardship waiver, however, was timely appealed. Undue hardship exceptions are made for divestment issues. Medicaid Eligibility Handbook § 17.7.4.

A divestment penalty period must be waived when the imposition of the penalty period deprives the individual of:

- Medical care such that the individual's health or life would be endangered; or
- Food, clothing, shelter, or other necessities of life.

In order to request an undue hardship waiver, an applicant or his/her representative must submit the following verification of hardship:

1. A statement signed by the individual (or his/her representative) which describes whether the assets are recoverable, and if so, the attempts that were made to recover the divested assets, and
2. Proof that an undue hardship would exist if the penalty period is applied (as follows).
 - If the member is currently institutionalized, s/he must submit a copy of the notification sent from the LTC facility which states both the date of involuntary discharge and alternative placement location or other proof that if the hardship waiver is not granted, the individual will be deprived of medical care such that the individual's health or life would be endangered; or deprived of food, clothing, shelter, or other necessities of life.
 - If the member is applying for Community Waivers COP, FamilyCare,, IRIS "Include, Respect, I Self-Direct" - A Medicaid waiver program. ,

PACE or Partnership, s/he must submit an estimate of the cost of the LTC services needed to meet his/her medical and remedial needs (as determined by the waivers case manager) and an estimate of costs for food, shelter, clothing and other necessities of life.

MEH § 17.17.5.

If the request for an undue hardship waiver is denied, the individual has the right to appeal the decision through a written request to the Division of Hearings & Appeals. The individual has 45 days from the date of the notice issuance to file the appeal. These same hearing rights are also applicable to the facility in which the individual resides, as long as the facility has the institutionalized individual's written permission to represent him/her in the appeal process. MEH § 17.17.8.

In a Fair Hearing such as this, the petitioner has the burden of proof to establish that a denial action taken by the agency, such as the denial of an undue hardship waiver, was improper given the facts of the case. See 20 C.F.R. §§416.200-416.202; see also, 42 C.F.R. §435.721(d). The burden of proof is on the applicant or recipient to show that one of the above circumstances exists. Unfortunately, there was no evidence produced at hearing that denial of the undue hardship waiver would have deprived the petitioner of medical care, food, clothing, shelter or other necessities. The petitioner's daughter argued that she attempted to work with all parties involved and provided all information at her disposal. However, there was no specific evidence produced to show that the petitioner would have been deprived of basic necessities if the undue hardship waiver was not granted. Similarly, the record does not reveal any effort to recover the divested assets, nor an indication that the assets were not recoverable.

Based on the evidence, the agency is correct that there is no basis under the regulations cited in the MEH for granting an undue hardship waiver at this time. Therefore, I conclude that the agency properly denied the Petitioner's request for an undue hardship waiver because the Petitioner's circumstances do not meet the criteria for granting such waiver.

CONCLUSIONS OF LAW

1. Petitioner's request for hearing was not timely as to the issues of: (a) back-dated MA benefits; and (b) the imposition of a divestment penalty covering the period of July 1, 2013 through July 26, 2013; as such the Division of Hearings and Appeals has no jurisdiction to consider the matters.
2. The agency properly denied the Petitioner's request for an undue hardship waiver.

THEREFORE, it is

ORDERED

That the petition be, and hereby 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, 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 20th day of December, 2013

\sPeter McCombs
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 20, 2013.

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