



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAP/152711

PRELIMINARY RECITALS

Pursuant to a petition filed October 11, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on November 05, 2013, at Racine, Wisconsin.

The issue for determination is whether the agency properly terminated the Petitioner's Medical Assistance Purchase Plan benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Rhonda Kramer

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On September 23, 2013, the Petitioner submitted his Elderly, Blind, Disabled (EBD) renewal. Petitioner submitted verifications of his bank accounts and a Wisconsin Retirement System (WRS) account.

3. The total account value of the WRS account is \$28,205.39.

DISCUSSION

The MAPP program allows disabled individuals to work but to retain eligibility for MA. Wis. Stat., §49.472; MA Handbook, Appendix 26.1. 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 October 1, 2013 when the agency determined his assets exceed program limits.

The Petitioner's only dispute with regard to the agency's calculation of his assets concerns his WRS account. The agency determined the assets in this account are countable because it is an available asset. The Petitioner argues it does not meet the MEH definition of an available asset and should not be counted.

According to the Medicaid Eligibility Handbook (MEH), an asset is available when:

1. It can be sold, transferred, or disposed of by the owner or the owner's representative, and
2. The owner has a legal right to the money obtained from sale of the asset, and
3. The owner has the legal ability to make the money available for support and maintenance, and
4. The asset can be made available in less than 30 days.

An asset is unavailable if:

1. The member lacks the ability to provide legal access to the assets, and
2. No one else can access the assets, and
3. A process has been started to get legal access to the assets.

Or

When the owner or owner's representative documents that the asset will not be available for 30 days or more.

MEH, § 16.2.1.

The MEH also discusses employment pension plans in determining assets and states as follows:

1. Employment related pension plans should be treated as follows.
 - a. If an applicant/recipient has the ability to cash in a work related benefit, the net amount of the benefit (after any penalties but before any tax withholding) available to the applicant/recipient should be treated as an available asset. Some retirement benefit plans allow employees to cash in their benefits as a lump sum payment when they leave their job instead of waiting until they reach retirement age to get the pension. However, do not count retirement funds as an available asset if the applicant/recipient has to quit a job to get at the retirement funds, or if the applicant/recipient is receiving periodic payments from the retirement benefit plan.

The Petitioner argues that the account should not be considered an available asset because it cannot be made available in less than 30 days. As support for this argument, he supplied information from the WRS website which states the following with regard to benefit payments:

“We appreciate your patience as we work with employers to obtain the information necessary to fulfill your benefit payment requests. The wait time for:

- separation benefit payments is approximately one to two months *after application is received. . .
- lump sum retirement benefit payments is approximately one to two months* after applications are received. . .

* The time frames listed may be longer based on the number of applications we receive, and the receipt and verification of necessary information from your employer. If your account is eligible for annual effective rate interest and you apply for a benefit payment in January, February or early March, your payment will be delayed (up to four months) until ETF determines the effective rate interest for the Core and Variable Funds.”

http://etf.wi.gov/news/bt_wait_times.htm.

The MEH indicates that an employment related pension plan should be treated as an available asset. According to the MEH definition of an “available asset”, the asset must be available in less than 30 days. In this case, the Petitioner has rebutted the agency’s evidence that the WRS account is “available” by demonstrating that it cannot be made available to him in less than 30 days. Therefore, I conclude the agency should not count the WRS as an available asset in determining the Petitioner’s eligibility for MAPP.

CONCLUSIONS OF LAW

The Petitioner’s WRS account is not an available asset for purposes of determining his eligibility for MAPP.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to reconsider the Petitioner’s eligibility for MAPP based on the finding in this decision that the Petitioner’s WRS account is not an available asset. The agency shall re-determine eligibility and issue a new Notice of Decision to the Petitioner regarding its determination. These actions 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 Milwaukee,
Wisconsin, this 23rd day of December, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, 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 December 23, 2013.

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