



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/153087

PRELIMINARY RECITALS

Pursuant to a petition filed October 23, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on November 26, 2013, at West Bend, Wisconsin.

The issue for determination is whether the Washington County Department of Social Services (the agency) correctly denied Petitioner’s request to back date her Medicaid benefits to June 1, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Ken Benedum, Economic Support Specialist
Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.

2. On August 23, 2013, Petitioner applied for Nursing Home Long Term Care Medicaid benefits. (Exhibit 4)
3. On September 23, 2013, the agency sent Petitioner a notice dated September 23, 2013, indicating that she was approved for benefits effective August 1, 2013. (Exhibit 4)
4. On October 23, 2013, Petitioner's son and authorized representative, filed a request for fair hearing on Petitioner's behalf, asking that her benefits be backdated to June 1, 2013. (Exhibit 1)
5. Petitioner is 88 years old and widowed. (Testimony of Petitioner's son; Member Information)
6. Petitioner had a life insurance policy with a face value of \$5000 and a cash value of \$3,364.05. (Exhibit 4)
7. In August 2013, Petitioner signed a beneficiary change request, assigning a funeral home as the owner and primary beneficiary of the policy. (Exhibit 4)

DISCUSSION

A person is eligible for Long Term Care Medicaid if **all** conditions of eligibility, including meeting the asset test, are satisfied. Wis. Admin. Code § DHS 103.08(1). Applications may be backdated for up to three months, as long as the applicant would have been eligible for benefits in those months. *Medicaid Eligibility Handbook (MEH)*, § 2.8.2.

In order to be eligible for Medicaid, a person's assets must be below \$2000. Wis. Stat. §49.47(4)(b); *MEH* §§27.5.1 and 39.4.

The cash value of life insurance policies must be counted as an asset, although for a person who is age 65 or over, blind, or disabled, the asset is counted only when the total face value of all policies exceeds \$1,500. *MEH* §§27.5.1 and 16.7.5

Petitioner had a life insurance policy with a cash value of \$3,364.05. She did not surrender ownership of the policy to a funeral home until August 2013.

Once petitioner assigned ownership of the policy to a funeral home, it was no longer a countable asset, because it became an irrevocable assignment of a Life Insurance Burial Contract. *See MEH* §§27.5.1 and 16.5.3.1. However, in June and July 2013, it was still a countable asset under *MEH* §§27.5.1 and 16.7.5. As such, the life insurance policy put Petitioner over the \$2000 asset limit in June and July 2013 and the agency correctly denied Petitioner's request to backdate her benefits.

The Petitioner's son testified that the nursing home social workers failed to tell him that he needed to have the beneficiary of the insurance policy changed right away to avoid having the policy count against the asset limit for Medicaid eligibility. Petitioner's son testified that had he known, he would have acted sooner, since the insurance policy had always been intended to cover Petitioner's funeral expenses.

Regrettably, Petitioner did not put her intent in writing and the life insurance policy was not assigned for funeral/burial costs until August 2013. The statutes and policies governing Medicaid eligibility do not allow for an exception to the rules, even when nursing home social workers give bad advice.

CONCLUSIONS OF LAW

The Washington County Department of Social Services correctly denied Petitioner's request to backdate her Medicaid benefits to June 1, 2013.

THEREFORE, it is

ORDERED

That the petition 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 Milwaukee,
Wisconsin, this 3rd day of December, 2013.

\sMayumi M. Ishii
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 3, 2013.

Washington County Department of Social Services
Division of Health Care Access and Accountability