



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

[REDACTED]  
MRA/145118

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 09, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance (MA), a hearing was held on January 15, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the agency has correctly determined the petitioner's eligibility for Institutional – Medical Assistance.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Petitioner's Representative:

Attorney Mark J. Rogers  
401 E Kilbourn Ave Suite 400  
Milwaukee, WI 53202

Respondent:

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

By: Kathi Tolnai, ESS

Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner applied for MA – Long Term Care (LTC) on August 29, 2012. Exhibit 1.

3. During the course of processing the application, the agency determined the value of petitioner's total assets to be \$194,065.61. The asset limit was determined to be \$115,640.
4. On November 1, 2012 the agency issued a notice of decision to petitioner stating that she was ineligible for MA because she was over the asset limit. Exhibit 9.
5. The petitioner's assets include a residential property that is owned by the [REDACTED] Living Trust, a revocable trust. The trustee of that revocable trust is [REDACTED], petitioner's community spouse, and their son [REDACTED].
6. The [REDACTED] Living Trust rents the property for \$650 monthly. [REDACTED] receives the rent from this property and uses it for his groceries, shopping, eating out, and the like.
7. In 2010 and 2011 [REDACTED] and petitioner filed a Schedule E for their tax purposes. The Schedule E was filed for the residential rental property. The rents received in 2010 were \$7150, and 2011 were \$7800.

### DISCUSSION

Institutional MA certification is available *if all conditions of eligibility*-- including meeting the asset test-- are satisfied. See Wis. Admin. Code §§DHS 103.08(1) and DHS 103.075(5)(a) and (b). In this case, the application was filed in August 2012, and MA certification was requested effective August 1, 2012 pursuant to that application. The issue that holds up petitioner's MA eligibility is passing the asset test. There is only one asset in question and that is the residential property from which the [REDACTED] Living Trust, by way of the Trustee - petitioner's community spouse – receives rental income. The agency counted the assets and found their total assets to be \$194,065.61, with an asset limit of \$115,640. As the available assets were greater than the asset limit, petitioner was found ineligible for MA due to excess assets. See also Wis. Admin. Code §DHS 103.075(5)(b)3.

Petitioner's representative argues that this rental property is a business asset and should be exempt from being considered against their asset limit. To show that this is a business, petitioner's Schedule E's were presented from 2010 and 2011 to show that rental income was reported for tax purposes as self-employment. Exhibit 4 and 6. The argument then goes that this should be exempted as a business asset pursuant to the *Medicaid Eligibility Handbook (MEH)*, §15.6.3.1, which provides in relevant part:

Business assets are generally income producing property. Exclude assets directly related and essential to producing goods or services. In EBD cases, all real and non-real business property is exempt if the business is currently operating for the self-support of the EBD individual. There is no profitability test. Note: See 16.9 Non-Home Property Exclusions.

*MEH*, §15.6.3.1.

I do not find that under the facts before me there is evidence to show that this rental property is exempt as a business asset that is "currently operating for the self-support of the EBD individual." Rather, the property is owned by the [REDACTED] Living Trust, where the trustee of that revocable trust is [REDACTED], petitioner's community spouse, and their son [REDACTED]. The [REDACTED] Living Trust owns and rents the property, and [REDACTED] receives the rent from this property and uses it for his groceries, shopping, eating out, and the like. This does not show me that it is operating for the self-support of the EBD individual – the petitioner.

As such, the *MEH* directs the agency to then look at the rental property as a non-home property and to consider what, if any, exclusion might apply. The *MEH* provides the following:

### 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%.

If the excluded portion produces less than a 6% return due to circumstances beyond the person's control (e.g., crop failure, illness), and there is reasonable expectation that it will again produce at least a 6% return, continue to consider the first \$6,000 in equity as excluded.

Here, there is no evidence that the property is listed for sale, so exclusion #1 does not apply. Exclusion #2 does not apply because, as stated above, it does not qualify as a business asset. Exclusion #3 does not apply because there is no evidence that this is a nonbusiness property that is used to produce goods or services essential to self-support. Finally, I agree that the agency was correct in stating that the fourth exclusion does not apply because the net annual income does not reach the 6% mark, and there is no evidence that the return is less than 6% due to circumstances beyond their control. There was no dispute at hearing regarding the net rent determined or that it was less than a 6% net annual return. Given the evidence before me, I find that the agency correctly included the rental property as a countable available asset to the petitioner and that therefore she is ineligible for MA due to excess assets.

### CONCLUSIONS OF LAW

The agency has correctly determined that the petitioner is not eligible for Institutional – Medical Assistance due to excess assets.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be 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, 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 1st day of February, 2013

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\sKelly Cochrane  
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 February 1, 2013.

Kenosha County Human Service Department  
Division of Health Care Access and Accountability  
[mrogers312@gmail.com](mailto:mrogers312@gmail.com)