



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/152887

PRELIMINARY RECITALS

Pursuant to a petition filed October 14, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a hearing was held on November 20, 2013, at Black River Falls, Wisconsin. The record was held open for 14 days at the petitioner's request.

The issue for determination is whether the entire joint account the petitioner held with her daughter counted when determining whether the petitioner's assets were within the medical assistance limit.

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: Tom Miller

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Jackson County.

2. The petitioner reapplied on August 1, 2013. On September 30, 2013, the agency found her eligible as of that date, but later moved her eligibility to July 1, 2013.
3. The petitioner held a joint checking account with her disabled daughter until she removed her name from that account on September 20, 2013. That account held \$3,319.02 and is the sole asset the agency attributed to the petitioner.
4. The petitioner has been over 65 at all times relevant to these proceedings.
5. The petitioner's daughter is disabled and receives medical assistance.

DISCUSSION

The petitioner was in a nursing home throughout most of 2013 and applied for institutional medical assistance at least three times. Her eligibility can begin retroactive to "the first day of the month 3 months prior to the month of application" as long as she meets all of the program's eligibility criteria. Wis. Admin. Code § DHS 103.08(1). 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). The petitioner filed her appeal on October 14, 2013, which is more than 45 days after all but the last application was denied. That application, which was filed on August 1, 2013, was denied on September 25, 2013. A person cannot receive institutional medical assistance if her available assets exceed \$2,000. See Wis. Stat. §§ 49.46(1) and 49.47(4). The September 25 denial initially determined that the petitioner was not eligible until August 1, 2013, but her eligibility was later allowed retroactive to July 1, 2013. The sole asset the agency attributed to the petitioner when determining her eligibility was bank account valued at \$3,319.02 that she held with her disabled daughter. That account was funded by her daughter's money and meant to allow the petitioner to pay her daughter's bills. It was placed solely into her daughter's name on September 25, 2013. The agency states that it made an error in finding her eligible before then but says that because it caused the error it would not seek to move the date of eligibility after July 1, 2013. The petitioner seeks earlier eligibility. Based upon her August 1, 2013, application, the earliest she could be eligible is May 1, 2013.

The sole question is how much of the joint account she held with her daughter is available to her. Medical assistance regulations found at Wis. Admin. Code, § DHS 103.06(3), state the following concerning joint accounts:

(3) JOINT ACCOUNTS AND JOINTLY HELD PROPERTY.

(a) Joint accounts. A joint account shall be deemed available to each person whose name is on the account or listed as an owner. The value of a joint savings or checking account shall be determined as follows in determining eligibility for MA:

1. For persons who receive MA who are not age 65 or over, or not blind or disabled, the division of a joint account shall be determined according to applicable federal law; and

2. For persons who receive MA who are age 65 or over or who are blind or disabled, joint accounts shall be divided as follows:

a. If both owners of the joint account receive MA, equal shares of the joint account shall be included for the purpose of determining MA eligibility; and

b. If only one owner of the joint account receives MA, the full amount of the joint account shall be included for the purpose of determining MA eligibility.

The petitioner is 66 years old and her daughter is disabled and receives medical assistance. This means that the account should have been divided between her and her daughter, attributing \$1,659.51 to each. Because this was the petitioner's only countable asset, she would have been eligible for medical assistance. I will remand this matter to the agency to find her eligible retroactive to May 1, 2013.

CONCLUSIONS OF LAW

1. The county agency incorrectly attributed the joint checking account the petitioner had with her daughter entirely to the petitioner when determining whether she was eligible for medical assistance.
2. The petitioner was eligible for medical assistance retroactive to May 1, 2013 because her countable assets were less than \$2,000 until then.

THEREFORE, it is**ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it find the petitioner eligible for institutional medical assistance retroactive to May 1, 2013.

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 8th day of January, 2014

\sMichael D. O'Brien
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 January 8, 2014.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability