



FH
[REDACTED]

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

In the Matter of

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

DECISION

MGE/153053

PRELIMINARY RECITALS

Pursuant to a petition filed October 24, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wood County Human Services - WI Rapids in regard to Medical Assistance, a hearing was held on December 02, 2013, at Wisconsin Rapids, Wisconsin.

The issue for determination is whether the county agency correctly denied the petitioner's application for MA-Long Term Care due to excess assets.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

Attorney Steven R. Sorenson
219 Washington Ave Suite 200
P O Box 1278
Oshkosh, WI 54903-1278

Respondent:

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

By: Beulah Garcia

Wood County Human Services - WI Rapids
320 West Grand Avenue
PO Box 8095
Wisconsin Rapids, WI 54495-8095

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. An application was filed on the petitioner's behalf for Nursing Home/Long-Term Care MA on August 19, 2013. Petitioner sought MA coverage for August, 2013, forward.
3. The county agency issued written notice to the petitioner on September 25, 2013, advising that his application was denied due to excess assets. Exhibit 2.
4. At application, the petitioner had non-exempt assets as follows: (1) \$1,361.16 in a bank account, and (2) \$4,045.49 in a whole life insurance policy (cash value). Exhibits 3 and 5. These amounts total \$5,406.65. The petitioner has monthly Social Security income totaling \$1,006.00. After subtraction of his monthly income (less than 30 days old) from the asset total, a balance of \$4,400.65 remained.
5. The petitioner owns a Wisconsin Funeral Trust Irrevocable Certificate of Deposit in the amount of \$6,000.00. The respondent determined this asset exempt.

DISCUSSION

MA certification is available if all conditions of eligibility-- including meeting the asset test-- are satisfied. Wis. Admin. Code § DHS 103.08(1). Certification pursuant to an application can be made retroactive for up to three months. The statute is absolute in its requirement that a person with more than \$2,000 in countable assets be found ineligible:

(b) Eligibility exists if the applicant's property does not exceed the following:

3g. Liquid assets for a single person limited to:

...

e. After December 31, 1988, \$2,000.

Wis. Stat. §49.47(4)(b). See also *MA Eligibility Handbook*, Table 39.4 (EBD).

Respondent noted at hearing that, while the petitioner sought to designate his life insurance asset for funeral purposes, the fact that he already has an exempt burial fund renders the life insurance non-exempt. MA policy provides that,

Burial fund exemptions apply only to EBD Medicaid fiscal group members. Burial funds are funds that are set aside for burial expenses. EBD Medicaid members and their spouses may each have one burial fund.

To find the amount of a burial fund that can be exempted, add:

1. The face value of the person's irrevocable burial trusts.
2. The face value of all of his/her life insurance policies whose cash value is exempt.
3. The face value of his/her exempt burial insurance (See 16.5.2 Burial Insurance).
4. The cash surrender value of revocably assigned life insurance funded burial contracts (LIFBC) (See 16.5.3.2 Revocable Assignment of LIFBC).
5. The burial funds portion of irrevocably assigned LIFBC (See 16.5.3.1 Irrevocable Assignment of LIFBC).

If the total value of above items is \$1,500 or more, do not exempt any more burial funds. If the total is less than \$1,500, subtract the total from \$1,500. The result is the amount of his/her burial fund total that is exempt.

Medicaid Eligibility Handbook, § 16.5.5.

The main issue that petitioner raised at hearing was his argument that he was unable to address the 'excess assets' basis for the denial of his Nursing Home/Long-Term Care MA application due to the vague notice of the denial notice. The September 25, 2013, denial included information regarding the petitioner's line insurance and burial assets that simply does not lend itself to an easy explanation. At hearing, respondent's representative was unable to explain certain asset valuations, and she conceded that the notice may have contained agency computational errors. The petitioner contends that this incorrect notice precluded him from ascertaining the manner by which he could address the excess asset limit.

I have no equitable powers that would allow me to consider the fairness of the situation and must apply the law as it is written. This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, he is not eligible for Nursing Home/Long-Term Care MA while his assets exceed \$2,000.00; the petitioner has identified no exception under the present circumstances, nor have I been able to identify any such codified exception. I am without any equitable powers to direct any remedy beyond the remedies available under law. Therefore, I must find that the respondent has correctly denied petitioner's application. If the petitioner disagrees with this decision he can appeal it to a circuit court, which does have equitable powers.

CONCLUSIONS OF LAW

The petitioner's available assets exceeded \$2,000.00, which resulted in a correct determination to deny petitioner's Nursing Home/Long-Term Care MA application.

THEREFORE, it is

ORDERED

That the petitioner's appeal 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 24th day of January, 2014.

\sPeter McCombs
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 January 24, 2014.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability
ssorenson@dkattorneys.com