



FH  
[REDACTED]

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

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In the Matter of

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

DECISION

MGE/153105

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**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 Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on December 02, 2013, at Madison, Wisconsin.

The issue for determination is whether the Department erred in its denial of petitioner's application for institutional MA.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Shawn Johnson

Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. On August 28, 2013, petitioner was admitted to [REDACTED].
3. Petitioner applied for institutional MA on August 29, 2013. Petitioner did not request a backdate of eligibility.
4. On September 25, 2013, the Department sent notice to petitioner requesting verification of an IRA.
5. From the date of application, petitioner had access to an IRA account with funds of \$4,646.87.
6. The requested verification was received at the agency on October 10, 2013.
7. The application was denied on October 10, 2013. The denial was communicated to petitioner and her advocate.
8. The IRA funds were deposited into petitioner checking account on October 25, 2013. They were withdrawn on 10/30/13 to pay for funeral expenses.
9. Petitioner appealed from the denial on October 10, 2013. The appeal was timely filed.

### DISCUSSION

The MA asset limit for an individual is \$2,000. Wis. Stat., §49.47(4)(b)3m. If assets are above that limit, the person is not eligible for MA. Included in assets which must be counted against the MA limit are cash values of life insurance policies if the total face value of the policies is more than \$1,500. Wis. Adm. Code, §DHS 103.06(10). Income is not counted as an asset in the month it is received. Handbook, App. 16.1. The statute does not allow for outstanding debts to be deducted from assets, nor does it provide any exceptions for unusual situations.

#### **Assets**

A person's asset eligibility in a backdate month is determined by whether or not s/he had excess assets on the last day of the month. If s/he had excess assets on the last day of the month, s/he is ineligible for the entire month. If s/he was asset eligible on the last day of the month, s/he is eligible for the whole month.

*Medicaid Eligibility Handbook*, § 2.8.

The *Handbook* further provides as follows:

Do not count income as an asset in the month it was received when determining the countable asset amount.

*Medicaid Eligibility Handbook*, § 16.1.

Thus, if asset eligible on the last day of the application month and the client is seeking MA retroactively, i.e., even if just back to the first day of that application month, the begin date is to be the first day of that month. It has been the longstanding policy of the Department that if the applicant was eligible on the last day of the application month, the certification begin date is the first day of that month, at a minimum.

It is rather clear from the record (see ex. #3 & #5) that the [REDACTED] checking account was over the \$2,000 limit on the last day of August (see ex. #3). But, the balance of this account on the last day of September was \$1,952.63. From this, \$510 of SS income should be deducted to arrive at an available balance of \$1,452.63.

As for the IRA (which is an account that meets the availability test in MEH § 16.2<sup>1</sup>), petitioner argued this these funds were designated by petitioner as burial funds. She argues that they should not be counted as assets. But, under MEH § 16.5.5, only \$1,500 of funds could be designated as burial funds and be exempt from the asset calculation. The IRA funds were deposited into the checking account on October 25, 2013 when received from the IRA custodian. The funds were in the amount of \$4,646.87. Even after deducting the \$1,500 for burial funds, the IRA alone placed petitioner over the MA asset limit in the month of application and also in September.

### CONCLUSIONS OF LAW

Petitioner was not eligible for institutional MA in August or September 2013 due to excessive assets.

**THEREFORE, it is ORDERED**

The Department did not err in its denial of the MA application as petitioner was over the asset limit.

### **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.

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<sup>1</sup> While petitioner argued that it took 6 weeks to receive the IRA funds after requesting them, her son admits that this is unusual. I have no evidence of how long it actually took in this case other than testimony which lacked precision. I also have no evidence that the request was filed properly or with all required documentation and signatures. The IRA funds were "available" based on this record and the common understanding of an IRA account.

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 9th day of  
January, 2014

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\sJohn P. Tedesco  
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 9, 2014.

Dane County Department of Human Services  
Division of Health Care Access and Accountability  
[akaminski@safetyweb.org](mailto:akaminski@safetyweb.org)