



FH
[REDACTED]

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

In the Matter of

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

DECISION

MGE/153247

PRELIMINARY RECITALS

Pursuant to a petition filed November 04, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Fond Du Lac County Department of Social Services in regard to Medical Assistance, a hearing was held on January 27, 2014, at Fond Du Lac, Wisconsin.

The issue for determination is whether the Department erred in its denial of institutional MA coverage for the months of May, June and July 2013 due to petitioner having assets in excess of the asset limit.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Deb Bohlman

Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County.
2. Petitioner entered a nursing home in January 2013.

3. Petitioner initially applied for institutional MA on May 31, 2013. This application was ultimately denied the application on July 18, 2013. The denial was appealed by petitioner and ALJ Gary Wolkstein issued a decision in case number MGE/151801 dismissing the appeal and concluding that the agency correctly denied the application due to petitioner's failure to provide timely verification documents as requested, and for being over asset limits. **Judge Wolkstein made the specific finding of fact that petitioner was over the asset limit and ineligible for MA for the months of May, June and July 2013.**
4. Petitioner filed another application for institutional MA on August 15, 2013. Petitioner requested backdated coverage for the months of May, June, and July 2013.
5. At the interview on August 19, 2013 relating to the application, the agency requested certain documentary verification from petitioner's representative, [REDACTED]. Some of these documents were provided at the interview. Some other documents were submitted by Mr. [REDACTED] on August 23, 2013. Further documents were submitted on August 30, 2013 and on September 3, 2013. Asset value verifications remained outstanding.
6. On September 5, 2013, the agency sent a request for verification of asset information, specifically the manner of use of a nearly \$4,000 withdrawal from the [REDACTED] and the value of certain [REDACTED] insurance policies. This information has been previously requested. The request also asked for information relating to the value of a boat, motor, and trailer.
7. Mr. [REDACTED] provided the requested verification on September 13, 2013.
8. On September 17, 2013, the agency denied the application due to excess assets over the asset limit.

DISCUSSION

Petitioner does not argue that petitioner was not over the asset limit. Petitioner's argument in this appeal is only that if petitioner had understood the rules and the asset limits, petitioner would have reduced assets and been able to make petitioner eligible. Petitioner argues that this was the fault of the agency for not providing the guidance that was needed. Petitioner made this same argument in the first hearing.

First of all, the argument petitioner makes is one of equity, or fairness. An administrative law judge is not empowered with the authority to decide a case based on equity. Judge Wolkstein made this clear in his decision as well when he addressed this argument the first time. I must follow the rules of the state of Wisconsin in statutes, the Administrative Code, and other sources. Petitioner concedes that petitioner was over the asset limit. The reason does not matter. Furthermore, I cannot agree that the agency bears any culpability. The county agency is not a law firm or an elder advocacy organization. It administers government programs. It is the obligation of petitioner to become informed or seek assistance as needed. The agency does not provide estate planning strategies – it determines eligibility based on facts.

Second, Judge Wolkstein already determined in a finding of fact in his decision that petitioner was not eligible in May, June, and July. Petitioner filed a second application and a second appeal from the denial of that application in order to have a second "kick at the cat" so to speak. This issue has been decided and a new argument pointing the finger at the agency does not change the determined fact that petitioner simply had too much money available to her in those months to be eligible.

CONCLUSIONS OF LAW

Petitioner was ineligible for MA in May, June and July 2013 as determined in case number MGE/151801.

THEREFORE, it is

ORDERED

That this 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 26th day of February, 2014

\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 February 26, 2014.

Fond Du Lac County Department of Social Services
Division of Health Care Access and Accountability