



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

In the Matter of

[REDACTED] [REDACTED]
c/o Atty. Thomas LaFave

DECISION

MQB/153651

PRELIMINARY RECITALS

Pursuant to a petition filed November 25, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waupaca County Department of Social Services in regard to a subset of the Medical Assistance (MA) program, Medicare Premium Assistance, a hearing was held on January 23, 2014, by telephone. The hearing record was held open for 7 days for a submission from the petitioner, which was received.

The issue for determination is whether the agency correctly denied the petitioner's September 2013 application for Medicare Premium Assistance.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] [REDACTED]
By: Atty Thomas LaFave
7177 N Port Washington Rd Suite 210
Milwaukee, WI 53217

Petitioner's Representative:

Attorney Thomas W. Lafave
7177 N. Port Washington Rd., Suite 210
Milwaukee, WI 53217

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Pamela Kolb, ES Spec.
Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. An application for Institutional/Long-Term Care MA and Medicare Premium Assistance was filed on the petitioner's behalf on September 16, 2013. Backdated eligibility for Institutional MA was sought retroactive to July 1, 2013. The application was signed by Attorney LaFave, and was accompanied by a cover letter from him on his law office letterhead.
3. The petitioner's community spouse refused to sign the application, so the application was treated like that of a single person. The application was signed by Attorney Thomas LaFave, who executed an Authorized Representative form, but did not have a witness sign that document. Other pertinent existing documentation includes a Durable Power of Attorney (2008), granting attorney-in-fact powers to [REDACTED] [REDACTED], and an Order for Temporary Guardianship, dated August 5, 2013, listing spouse [REDACTED] [REDACTED] [REDACTED] as guardian of the person only, for 60 days.
4. On September 27, 2013, the agency issued a written verification request to [REDACTED] [REDACTED] (POA), with questions relating to assets, the status of the petitioner's home, and trust accounts. A second verification request was sent to [REDACTED] on October 7, 2013, with a due date of October 16, 2013. Verification was not received by October 16, 2013.
5. On October 17, 2013, the agency issued written notice to the petitioner advising that his application had been denied due to failure to supply requested verification.
6. On October 3, 2013, the petitioner was discharged from the nursing home to his residence. Also, his wife served him with divorce papers on that date, and her guardianship was terminated.
7. The petitioner's application attachments verify that he had monthly income of \$1,877.90 from Social Security, \$129 from the Veteran's Administration, and \$916.06 from a pension. These amounts total \$2,922.96 monthly.

DISCUSSION

This hearing request was processed by this Division's staff as an appeal from denial of Institutional MA and as a separate appeal of denial of Medicare Premium Assistance. The focus of the parties was on the Institutional MA denial. That decision will be issued under separate cover. This document covers only the topic of the petitioner's eligibility for Medicare Premium Assistance.

Medicare is the health insurance program administered by the federal Centers for Medicare & Medicaid Services (CMS) for people over 65 and for certain younger disabled people. Medicare is divided into two types of health coverage. Hospitalization Insurance (Part A) pays hospital bills and certain skilled nursing facility expenses. Medical Insurance (Part B) pays doctors' bills and certain other charges.

Medicare is an insurance program that charges premiums. Wisconsin *Medical Assistance* (MA) pays some or all Medicare premiums for eligible persons through the subprograms described below:

1. Qualified Medicare Beneficiary (QMB).
2. Specified Low-Income Medicare Beneficiary (SLMB).
3. Specified Low-Income Medicare Beneficiary Plus (**SLMB+**), also known as Qualifying Individuals – 1 (QI-1).
4. Qualified Disabled and Working Individuals (QDWI).

MA Eligibility Handbook (MEH), 32.1.1, online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. QMB pays for Medicare Part A and B premiums, SLMB and SLMB+ pay Medicare Part B

premiums, and QDWI pays Part A premiums. *Id.*, §32.1.3. Subprograms 1 through 4 are collectively referred to as Medicare Premium Assistance programs.

The income limit for QMB is up to 100% of the federal poverty level. For SLMB the limit is from 100% to 119%, and for SLMB+ it is 120% to 134% of the federal poverty level. *MEH*, 32.2 – 32.5. Gross income is used in income testing. *MEH*, 15.1.5 & 32.1.1.

In 2013, 100% of the federal poverty level for two persons was \$1,269.83, 120% is \$1,513.00, and 135% was \$1,702.13. *Id.*, 39.5. Because the petitioner's income exceeds the SLMB+ amount, denial of any form of Medicare Premium Assistance was correct, due to excess income.

On a procedural note, there was disagreement between the parties as to the notification consequences of the application being filed by an attorney. Of course, any attorney may file an MA application, because any person may file an MA application. Wis. Admin. Code § DHS 102.01(1). The application is to be signed by the patient, *or* an authorized representative, *or* "someone acting responsibly for the applicant" for an incompetent person. Two witness signatures are required if the applicant signs with a mark; a mark was not used here, so that requirement was not applicable. Because of an attorney's unique role as a professional representative, witnessing of the attorney's signature should not be required. I agree with the petitioner's attorney that copies of the verification request letters of September 27 and October 7, 2013, plus the October 17 denial notice, should have been sent to the attorney because the attorney was the person filing the application. However, the failure to copy the attorney does not change the outcome of the Medicare Premium Assistance determination.

CONCLUSIONS OF LAW

1. Denial of the petitioner's request for Medicare Premium Assistance was correct, due to excess income.

THEREFORE, it is

ORDERED

That the petition is dismissed (Medicare Premium Assistance issue).

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 25th day of February, 2014

\sNancy J. Gagnon
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 25, 2014.

Waupaca County Department of Social Services
Division of Health Care Access and Accountability
Attorney Thomas Lafave