



FH
[REDACTED]

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

In the Matter of

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

DECISION

MGE/154120

PRELIMINARY RECITALS

Pursuant to a petition filed December 16, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a telephone hearing was held on February 11, 2014.

The issue for determination is whether petitioner’s Medical Assistance (MA) application may be backdated to January, 2013.

There appeared at that time 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: Chris Sobczak
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Milwaukee County; petitioner died on March 16, 2014.

2. Petitioner applied for MA on April 10, 2013; respondent received the full application on April 29, 2013. Exhibit 2
3. The respondent misfiled the petitioner's application, and as a result did not commence processing the application until August of 2013. On October 1, 2013, petitioner received a notice of denial
4. Petitioner's assets exceeded program limits until October, 2013.

DISCUSSION

A person cannot receive medical assistance if his assets exceed \$2,000. Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. §§ 49.46(1) and 49.47(4). Eligibility begins "on the date on which all eligibility requirements were met, but no earlier than the first day of the month 3 months prior to the month of application." Wis. Admin. Code § DHS 103.08(1). When retroactive benefits are requested, eligibility depends upon whether the assets exceeded the limit on the last day of the month. *Medicaid Eligibility Handbook*, § 2.8.2.

The petitioner filed an application for assistance, which resulted in a substantial delay in processing. Ultimately, the respondent denied the application due to excess assets. At hearing, petitioner's representative conceded that the majority of the excess assets in petitioner's account constituted accumulated VA Aid & Attendance funds. Acting with an abundance of caution, petitioner's representative maintained those funds in petitioner's account because he understood that those funds could not be used to pay for nursing care if petitioner also received MA benefits. He later learned that his understanding was incorrect. In any event, he asserts that the delay in processing petitioner's application directly caused the delay in correcting his understanding of the VA Aid & Attendance funds matter.

The petitioner also contends that his debts should count against his assets, which would bring those assets below the \$2,000 limit. There is no legal authority to count debts against assets when determining eligibility, and the Division of Hearings and Appeals has no equitable power that would allow it to consider the fairness of the situation.¹ Rather, the law requires me to find the petitioner ineligible during any month in which his assets exceed \$2,000.00. Because his assets exceeded \$2,000 through October, 2013, I must uphold the agency's decision.

CONCLUSIONS OF LAW

The county agency correctly denied retroactive medical assistance to the petitioner because his assets exceeded \$2,000.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

¹ It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 11th day of April, 2014.

\sPeter McCombs
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 April 11, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability