



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MGE/154904

PRELIMINARY RECITALS

Pursuant to a petition filed January 16, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Walworth County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on March 10, 2014, at Elkhorn, Wisconsin. At the request of the parties, the record was held open for the submission of consecutive written closing arguments by the county agency with a response by the petitioner's representative. Both parties timely submitted their closing arguments to DHA which are received into the hearing record.

The issue for determination is whether the county agency correctly denied petitioner's October 31, 2013 MA nursing home application until November 1, 2013 due to assets above the MA asset eligibility limit.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Representative:

[Redacted], office manager
[Redacted]
[Redacted]

Respondent:

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

By: Sandra Cross, ESS
Walworth County Department of Human Services
W4051 County Rd NN
Elkhorn, WI 53121-1006

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Walworth County who has resided in the [REDACTED] nursing home.
2. On or about April 17, 2013, petitioner's representative filed on behalf of petitioner an MA nursing home application to the county agency.
3. The county agency denied that application due to failure to verify all required financial information to the county agency.
4. On October 31, 2013, petitioner's representative re-applied on behalf of petitioner for MA nursing home eligibility.
5. The county agency sent a December 16, 2013 Notice of Decision to the petitioner stating that petitioner was determined eligible for nursing home MA as of November 1, 2013, when his assets (checking account balance) were below the \$2,000 asset eligibility limits.
6. On March 13, 2014, petitioner's representative sent proof to the county agency that the nursing home received an October 31, 2013 payment of \$8,500 from petitioner's checking account in payment of petitioner's nursing home bill. That payment reduced the petitioner's assets in his checking account below \$2,000.
7. The county agency sent a March 14, 2014 positive notice to the petitioner stipulating that based upon the March 13, 2014 verification of the \$8,500 October 31, 2013 payment to the nursing home, the county re-determined petitioner to be eligible for nursing home MA as of October 1, 2013 (because he was below the \$2,000 asset limit).
8. Neither petitioner nor his representative submitted any reliable evidence to the Division of Hearings and Appeals (DHA) to establish that petitioner did not have available asset above the \$2,000 MA asset limit prior to October 1, 2013.

DISCUSSION

The MA asset limit for a group of one is \$2,000. Wis. Stat., §49.47(4)(b)3m. MA policy confirms that the MA asset limit for a group of one is \$2,000. Medicaid Eligibility Handbook, Appendix 39.4.1, "Elderly, Blind & Disabled (EBD) Assets and Income Table. If available assets are above that limit, the person is not eligible for MA. The statute does not allow for outstanding debts to be deducted from assets, nor does it provide any exceptions for unusual situations. An asset is considered available if it can be sold or disposed of by the owner or the owner's representative, the owner has legal title to it, and the owner has the legal ability to make the money from the asset available for support and maintenance. Medicaid Eligibility Handbook, 16.2.1. In the instant case, as explained in the above Findings of Fact, the petitioner's total assets were above the \$2,000 MA asset limit prior to October, 2013.

During the March 10, 2014 hearing and in her closing argument, petitioner's representative, [REDACTED], contended that on February 19, 2013, petitioner's POA Bill Nettleton stole \$11,649.34 from the petitioner's account. The police were contacted and charges were allegedly filed. However, Bill Nettleton apparently re-deposited in the petitioner's account the "stolen" funds on or about May 23, 2013. Ms. [REDACTED] argued that this incident was very upsetting to the petitioner.

In her March 21, 2014 letter, Ms. [REDACTED] stated that: "In the last two weeks, our Social services Assistant, [REDACTED], has made several attempt to contact Chief [REDACTED] and has left messages requesting information on the availability of [REDACTED]'s funds during the investigation. Unfortunately, Chief [REDACTED] has not gotten back to us yet." As a result, the petitioner's representative has not established with

any reliable evidence that the funds re-deposited into petitioner's checking account on or about May 23, 2013 were not legally available to the petitioner (even if he was upset by the incident). Therefore, those assets must be counted in asset eligibility determinations pursuant to the Medicaid Eligibility Handbook, 16.2.1, "Assets Availability Introduction."

As explained above, after reviewing the new evidence, the county agency correctly concluded that petitioner was MA asset eligible as of October 1, 2013 (not November 1, 2013). However, the county determined even after the new evidence that petitioner continued to have available assets over \$2,000 for the months prior to October, 2013. The petitioner did not establish with any reliable documentation petitioner's asset eligibility prior to October 1, 2013, pursuant to the Medicaid Eligibility Handbook, 16.2.1. Petitioner's representative was unable to provide any testimony or evidence to reliably refute the county's case regarding petitioner's assets above the MA asset limits prior to October, 2013. Accordingly, based upon the above, I must conclude that the county agency correctly re-determined that the petitioner was eligible for nursing home MA as of October 1, 2013, but was above the MA asset eligibility limits prior to October, 2013.

CONCLUSIONS OF LAW

Based upon new evidence, the county agency re-determined that petitioner was asset eligible for nursing home Medicaid as of October 1, 2013, not November 1, 2013.

THEREFORE, it is

ORDERED

The matter is remanded to the county agency with instructions to certify the petitioner as eligible for nursing home Medicaid retroactive to October 1, 2013, within 10 days of the date of this decision.

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 5th day of May, 2014

\sGary M. Wolkstein
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 May 5, 2014.

Walworth County Department of Human Services
Division of Health Care Access and Accountability