



FH
[REDACTED]

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

In the Matter of

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

DECISION

MGE/155196

PRELIMINARY RECITALS

Pursuant to a petition filed January 30, 2014, 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 telephonic hearing was held on March 18, 2014, at Fond Du Lac, Wisconsin.

The issue for determination is whether the county agency correctly denied the petitioner’s November 25, 2013 Institutional MA application, due to her husband’s refusal to sign the application or provide required financial verification to the county agency.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Representative:

[REDACTED] [REDACTED], daughter
[REDACTED]
[REDACTED]

Respondent:

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

By: Sandra Thern, ESS
Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Fond Du Lac County who resided in a nursing home. The petitioner's community spouse was [REDACTED].
2. The petitioner died on December 25, 2013.
3. The petitioner's daughter, [REDACTED], represented the petitioner at the March 18, 2014 hearing.
4. The petitioner's first August 23, 2013 Institutional MA application was denied due to lack of valid signature and being over the asset limit due to the cash value of a life insurance policy. See Exhibit 1. The petitioner did not timely appeal that denial to DHA.
5. The petitioner's representative filed on behalf of the petitioner an Institutional MA re-application on November 25, 2013 with the county agency.
6. The county agency sent a December 18, 2013 letter to the petitioner explaining that due to a change in Spousal Impoverishment policy (DHS Operations Memo 13-38), the petitioner's husband, [REDACTED], is required to cooperate (participate in petitioner's application process) with information regarding the petitioner's financial eligibility for Institutional MA. That letter stated that if Mr. [REDACTED] refuses to cooperate, sign the application, or provide proof of his assets (including value of life insurance policies) and income, then the petitioner's MA application will be denied.
7. The county agency sent a December 18, 2013 Notice of Proof required to the petitioner's representative stating that petitioner must provide verification to the county agency by December 28, 2013 of all asset and income information of petitioner and her husband.
8. The county agency sent a January 3, 2014 Notice of Decision to the petitioner's representative, [REDACTED], stating that the petitioner's Institutional MA application was denied due to failure to provide required verification regarding petitioner's husband's assets and income to the county agency as required by DHS Operations Memo 13-38.

DISCUSSION

During the hearing, the county representative, ESS Sandra Thern, established that the county agency correctly denied the petitioner's November 25, 2013 Institutional MA application, due to her husband's refusal to sign the application or provide required financial verification to the county agency. At the time of her application, petitioner was in a nursing home and remained married to [REDACTED] as her community spouse. As indicated above, county agency sent a December 18, 2013 letter to the petitioner explaining that due to a change in Spousal Impoverishment policy (DHS Operations Memo 13-38), the petitioner's husband, [REDACTED], was required to cooperate (participate in petitioner's application process) including providing his financial information regarding the petitioner's financial eligibility for Institutional MA. That letter also indicated that if Mr. [REDACTED] refuses to cooperate, sign the application or provide proof of his assets (including value of life insurance policies) and income, then the petitioner's MA application would be denied.

The hearing record is uncontested that Mr. [REDACTED] refused to cooperate, refused to sign petitioner's application, and refused to provide his financial information to the county agency. During the hearing, petitioner's representative and daughter, [REDACTED], and her friend, [REDACTED], were unable to refute with any reliable evidence that petitioner's husband refused to cooperate with petitioner's application as established by the county agency.

DHS Operations Memo 13-38 (dated 11/7/2013) states in pertinent part:

Beginning with applications dated November 11, 2013 or later, financial information and signatures are required from both the spouse applying for LTC (including Family Care, Partnership and Pace) or Institutional Medicaid and his or her community spouse. **Eligibility will be denied for an individual whose community spouse refuses to sign the application, refuses to disclose the value of assets, or refuses to provide required information on income or resources.** This means that “Just say no” is no longer a viable strategy for shielding assets. (Wis. Stat. 49.455(5)(e).

(Emphasis added).

The petitioner’s representative was unable to refute with any reliable evidence that DHS Operations Memo 13-38 applied to the denial of petitioner’s November 25, 2013 MA application. Accordingly, based upon the above, I conclude that the county agency correctly denied the petitioner’s November 25, 2013 Institutional MA application, due to her husband’s refusal to sign the application or provide required financial verification to the county agency as required by DHS Operations Memo 13-38.

CONCLUSIONS OF LAW

The county agency correctly denied the petitioner’s November 25, 2013 Institutional MA application, due to her husband’s refusal to sign the application or provide required financial verification to the county agency as required by DHS Operations Memo 13-38.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby Dismissed.

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 28th day of April, 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 April 28, 2014.

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