



FH  
[REDACTED]

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

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In the Matter of

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

DECISION

MGE/155292

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 06, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on March 19, 2014, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner had to transfer exempt assets to remain eligible for medical assistance under the spousal impoverishment provisions of the program.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Petitioner's Representative:

Attorney Peter E. Grosskopf  
1324 West Clairemont Avenue, Suite 10  
Eau Claire, WI 54701

Respondent:

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

By: Steve Tilbury

Eau Claire County Department of Human Services  
721 Oxford Avenue  
PO Box 840  
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.

2. The petitioner's medical assistance eligibility closed on October 31, 2013, because he failed to conduct his annual review. He had been eligible under the spousal impoverishment provisions of the program.
3. The petitioner reapplied for medical assistance on December 10, 2013, requesting eligibility retroactive to November 1, 2013. The county agency denied the application on January 8, 2014, because he held a life insurance policy worth \$6,322 that had not been transferred to his wife by that date.
4. On January 16, 2014, the petitioner designated the life insurance policy for burial purposes. The designation was made retroactive to November 1, 2013.

### DISCUSSION

A person usually cannot be eligible for medical assistance if his assets exceed \$2,000. Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. § 49.47(4)(b)3g. However, the medical assistance program contains special spousal impoverishment provisions that increase this limit so that a person does not fall into poverty when her spouse becomes institutionalized. *See* Wis. Stat. § 49.455 and 42 U.S.C. § 13964-5. The petitioner had been receiving medical assistance under this program. Those benefits ended on October 31, 2013, because he failed to complete his review on time.

He reapplied on December 10, 2013. Medical assistance 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). This means that he was potentially eligible for benefits retroactive to November 1, 2013, the first day he was without benefits. An institutionalized spouse must “make the transfer as soon as practicable after the initial determination of eligibility for medical assistance, taking into account the amount of time that is necessary to obtain a court order [requiring support of a third person].” Wis. Stat. § 49.455(6)(a). The Department interprets this statute in the following way at *Medicaid Eligibility Handbook*, § 18.4.6.1:

The institutionalized spouse must transfer the assets to the community spouse by the next regularly scheduled review (12 months). If his/her assets are above \$2,000 on the date of the next scheduled review, s/he will be determined ineligible. S/he will remain ineligible until his/her assets no longer exceed the \$2000 Medicaid asset limit.

The county agency denied the application on January 8, 2014, because it contends that a life insurance policy valued at \$6,322 remained an asset countable to the petitioner for a year after he was initially found eligible. On January 16, 2014, the petitioner designated the policy for burial purposes retroactive to November 1, 2013. All assets set aside for burial expenses are exempt. Wis. Admin. Code, § 103.075(5)(b)2.b; *Medicaid Eligibility Handbook*, § 18.4.1.3.

It is somewhat difficult to determine exactly what happened because none of the agency's decisions concerning initial and subsequent eligibility were submitted; the agency's only documentation was its summary of its action, which did not indicate when the petitioner was initially found eligible. Regardless, it appears that the only question to resolve is whether the designation of the life insurance policy can be retroactive.

Because I find no authority specifically answering this question, I will look at the purpose of the various relevant laws and policies and the repercussions of interpreting them in a particular way. The overriding purpose of the spousal impoverishment provisions is to ensure that the spouse remaining in the community has adequate resources to protect her needs. These provisions should be interpreted liberally to ensure that this happens. Although this case does not involve a transfer of assets from the petitioner to

his spouse, any determination that leaves him ineligible for benefits is likely to harm her financially. But the Department has interests, too. It has an interest in ensuring that the couple's resources are used to prevent her impoverishment and not some other purpose. There are conceivably circumstances, albeit remote, under which the institutionalized spouse could transfer assets that remained in his name to someone other than his spouse to her detriment. In addition, economic support workers have large caseloads that they must handle efficiently. Both of these points provide the justification for setting a specific date by which to transfer the assets. Although Wis. Stat. § 49.455(6)(a) itself does not provide a specific period in which the institutionalized spouse must transfer or reduce his assets, one year seems reasonable under most circumstances.

The most significant problem with allowing a retroactive designation of burial assets is that it would undermine the hard one-year transfer deadline set by the Department in *Medicaid Eligibility Handbook*, § 18.4.6.1. I do not find this to be the overriding concern in this matter. There is no evidence that the petitioner has in any way manipulated the system to transfer the assets away from his spouse to her detriment. He was an ongoing recipient of medical assistance, and the agency had to review his assets when he reapplied, so there is little or no additional work involved in allowing the retroactive designation of the assets. On the other hand, denying the retroactive designation undermines the declared purpose of the spousal impoverishment law at the expense of enforcing a one-year policy that is not strictly required by that law. Because there is no authority for prohibiting the retroactive designation of the life insurance and because allowing this designation is consistent with the primary purpose of the spousal impoverishment statute, the petitioner can designate the policy retroactively. As a result, he is also eligible for medical assistance retroactive to November 1, 2013.

### CONCLUSIONS OF LAW

1. The petitioner may retroactively designate a life insurance policy for burial purposes.
2. The petitioner's countable assets did not exceed \$2,000 one year after he was originally found eligible.

**THEREFORE, it is**

### ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it reinstate the petitioner into the medical assistance program retroactive to November 1, 2013.

### **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 2nd day of April, 2014

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\sMichael D. O'Brien  
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 2, 2014.

Eau Claire County Department of Human Services  
Division of Health Care Access and Accountability  
Attorney Peter Grosskopf