



FH
[REDACTED]

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

In the Matter of

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

DECISION

MGE/155546

PRELIMINARY RECITALS

Pursuant to a petition filed February 15, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to Medical Assistance, a hearing was held on April 07, 2014, at Green Bay, Wisconsin.

The issue for determination is whether petitioner was eligible for institutional MA in November 2013.

There appeared at that time and place 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: Sarah Burden

Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner applied for institutional MA on November 21, 2013.

3. Petitioner had just sold real estate and the funds were in a joint checking account at the time of application with a balance exceeding \$61,000.
4. Petitioner was over the \$2,000 asset limit for November 2013.
5. Petitioner became eligible in December 2013.
6. Petitioner appealed the denial of MA for November 2013.

DISCUSSION

MA certification is available if all conditions of eligibility-- including meeting the asset test are providing necessary, requested verification, are satisfied. Wis Admin. Code § DHS 103.08(1). Certification pursuant to an application can be made retroactive for up to three months. For a person seeking in a 2-person group seeking Institutional MA coverage, the asset limit is \$3,000. Wis. Stat. §49.47(4)(b). See also MA Eligibility Handbook (MEH), Table 39.4 (EBD), viewable online at <http://www.emhandbooks.wi.gov/meh-ebd/>. When a joint account is shared with an EBD MA member then the account is split with half deemed toward the applicant's assets. If the account is shared with a non-EBD MA member, then the full share is deemed to the applicant. Either way, the \$61,000 balance places petitioner over the limit for November.

Petitioner concedes that she was over the asset limit. At hearing, her argument was that she did not know the rules. That is not a concern of mine for the purposes of this hearing. That is a matter of equity, or "fairness." I have no powers of equity as does a circuit court judge. Petitioner concedes that she made "assumptions." The assumptions were wrong. Had petitioner sought legal assistance or other elder law counsel she may have gotten the advice she now wishes she received. But, I cannot fault the agency for not providing legal advice in elder and estate preservation strategy. I can only apply the rules of the program. Petitioner was not eligible for MA in November 2013.

CONCLUSIONS OF LAW

Petitioner was over the asset limit for institutional MA in November 2013.

THEREFORE, it is

ORDERED

That this appeal is 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 2nd day of May, 2014

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 2, 2014.

Brown County Human Services
Division of Health Care Access and Accountability