



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted] III
[Redacted]
[Redacted]
[Redacted]

DECISION

MGE/155671

PRELIMINARY RECITALS

Pursuant to a petition filed February 21, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Juneau County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on April 14, 2014, at [Redacted], Wisconsin. The record was held open for one month for the submission of additional written argument and evidence to DHA. Those submissions from the county agency and petitioner are received into the hearing record.

The issue for determination is whether the county agency correctly denied the petitioner's January 2, 2014 BadgerCare Plus application due to involuntary commitment as an "inmate" at the [Redacted] Facility per Wisconsin Statute §49.47(6)(c) and the Medicaid Eligibility Handbook, 6.9.2.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted] III
[Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: William J. Blank, Economic Support Manager
Juneau County Department of Human Services
Courthouse Annex
220 E. LaCrosse Street
[Redacted], WI 53948

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 66 year old resident of Juneau County.
2. The petitioner was incarcerated at the Dodge Correctional Institution.
3. Petitioner was transferred as an involuntary commitment to the [REDACTED] Facility in [REDACTED], Wisconsin as a sexually violent person under Wisconsin Chapter 980.
4. While involuntarily at [REDACTED] facility, petitioner on January 2, 2014 applied for BadgerCare Plus benefits.
5. The county agency sent a February 18, 2014 Notice of Decision to the petitioner stating that his BC application was denied because he was an "inmate" at a "public institution," the [REDACTED] facility and thus was not eligible for BC benefits per Medicaid Eligibility Handbook, 6.9.2.
6. The petitioner was unable to establish with any reliable documentation that he was hospitalized during the period from his January 2, 2014 application date until the agency denial of his BC application on February 14, 2014.

DISCUSSION

Inmates of a public institution are ineligible for MA. *Medicaid Eligibility Handbook*, §§ 6.9.1, 6.9.2. The petitioner was in the [REDACTED] Facility during the period of his MA application. The following are relevant sections of the Medicaid Eligibility Handbook:

6.9.1 Definitions

An "inmate" is a person residing in a *public institution*  **on an involuntary basis**. For example, a prisoner in a jail, prison, or other correctional facility is considered an inmate. A staff person voluntarily residing in a public institution is not considered an inmate. An individual voluntarily residing in an institution while waiting for other living arrangements to be made which are appropriate to the person's needs is not considered an inmate.

"Public institution" means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. The term "public institution" does not include a medical institution (See [27.1 Institutions](#)), a publicly operated community residence that serves no more than 16 residents, or a child care institution in which *foster care*  maintenance payments are made under title IV-E.

6.9.2 Inmates Introduction

Individuals who are inmates of a public institution are not eligible for Medicaid, with two exceptions (outlined below). **An inmate is a person who is residing in a public institution on an involuntary basis.**

For example, a prisoner in a jail, prison, or other correctional facility is considered an inmate. A staff person voluntarily residing in a public institution is not considered an inmate. An individual voluntarily residing in an institution while waiting for other living arrangements to be made which are appropriate to the person's needs is not considered an inmate.

Inmates are ineligible for Medicaid services on any day in which they are residing in a public institution. Providers are prohibited from receiving payment for any services rendered to an inmate even if the inmate is still certified as eligible for Medicaid and has not received any negative notice. Inmates may never be considered temporarily absent from a household and receive Medicaid benefits. Temporary absence policies do not apply in the case of inmates.

Individuals who are inmates of a public institution are not eligible for Medicaid, with the following two exceptions:

1. **Prenatal Exception** - Pregnant women may apply for and receive BCPP while they are an inmate.
2. **Inpatient Exception** - If an inmate resides outside of a public correctional institution for more than 24 hours at any one time, s/he can qualify for Medicaid during that time period if s/he meets all other eligibility criteria. For example, if an inmate of a public institution is admitted, as an inpatient to a medical institution for 24 hours or more, and is otherwise eligible, manually certify him/her for Medicaid from the admission date through the discharge date.

In this case, petitioner was unable to establish with any reliable evidence that he met either of the two exceptions stated above.

Wisconsin law is clear that those incarcerated are not eligible for medical assistance. WI Stats §49.47(6)(c), states, “Benefits shall not include any payment with respect to: ... 3. Care or services for an individual who is an inmate of public institution, except as a patient in a medical institution or a resident in an intermediate care facility.”

In this case, the hearing record is clear that petitioner has resided at the [REDACTED] facility on an **involuntary basis** during the entire period relevant to this appeal. The petitioner was an “inmate” of a public institution was unable to establish that he met the conditions of either of the two exceptions stated above. During the hearing and in his several written submissions to DHA, the petitioner argued that he should be eligible for MA because such eligibility is allegedly possible through an internal policy SR 555 at [REDACTED] Facility. However, SR 555 only refers generally to the “Source of Funds” to MA not the establishment of MA eligibility, and petitioner is likely not even eligible under SR 555 because he was “under a criminal commitment.” In any case, the facility internal policy SR 555 (or any other internal policy) does not supersede the Statewide policy of the Medicaid Eligibility Handbook policy 6.9, and thus the BC policy must be followed. Furthermore, Wisconsin law specifically bars medical assistance payments “with respect to: ... 3. Care or services for an individual who is an inmate of public institution...” Wis. Stat. § 49.47(6)(c). Inmates of a public institution are ineligible for medical assistance pursuant to Wis. Stat. § 49.47(6)(c).

Despite his many submissions and arguments to DHA, the petitioner was unable to refute the county agency’s case and the clear law and policy regarding inmate ineligibility for MA. Accordingly, based upon the above, I must conclude that the county agency correctly denied the petitioner’s January 2, 2014 BadgerCare Plus application due to involuntary commitment as an “inmate” at the [REDACTED] facility per WI Stats §49.47(6)(c) and the Medicaid Eligibility Handbook, 6.9.2.

CONCLUSIONS OF LAW

The county agency correctly denied the petitioner’s January 2, 2014 BadgerCare Plus application due to involuntary commitment as an “inmate” at the [REDACTED] facility per Wisconsin Statute §49.47(6)(c) and the Medicaid Eligibility Handbook, 6.9.2.

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 20th day of June, 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 June 20, 2014.

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