



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

In the Matter of

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

DECISION

MGE/156273

PRELIMINARY RECITALS

Pursuant to a petition filed March 21, 2014, under Wis. Stat., §49.45(5), to review a decision by the Dane County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on May 14, 2014, by telephone.

The issue for determination is whether petitioner’s assets placed her over the asset limit for a three-month period.

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: Tari Donnelly
Dane County Dept. of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner became eligible for nursing home MA under spousal impoverishment rules in 2012. In September, 2013, the county did an annual renewal, which was filed by petitioner on September 30, 2013. MA was closed initially on October 1 due to verification delays.

3. On January 2, 2014, a new application was filed seeking coverage back to October 1, 2013. It was discovered that petitioner's name had not be removed from joint assets, and thus those assets had to be counted in full in determining MA; the values were above \$2,000. After petitioner's name was taken off the assets later in January, 2014, the county found petitioner to be eligible for MA effective January 1, 2014, but MA was not backdated to October 1, 2013.
4. Petitioner's representative was not told of the need to transfer assets to the community spouse until the reapplication in January, 2014.

DISCUSSION

The federal Medicaid Catastrophic Coverage Act of 1988 (MCAA) included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat., §49.455(1).

When initially determining whether an institutionalized spouse is eligible for MA, county agencies are required to review the combined assets of the institutionalized spouse and the community spouse. MA Handbook, Appendix 18.4.1. All available assets owned by the couple are to be considered. Homestead property, one vehicle, and anything set aside for burial are exempt from the determination. The couple's total non-exempt assets then are compared to an "asset allowance" to determine eligibility.

An asset allowance is set for the couple. MA Handbook, App. 18.4.3, which is based upon Wis. Stat., §49.455(6)(b). \$2,000 (the MA asset limit for the institutionalized individual) is then added to the asset allowance to determine the asset limit under spousal impoverishment policy. If the couple's assets are at or below the determined asset limit, the institutionalized spouse is eligible for MA.

After the person is found eligible for nursing home MA under these provisions she must transfer any assets in her name to the community spouse. Those assets then will not be counted as assets of the recipient in the future. Wis. Stat., §49.455(6)(a); Handbook, App. 18.4.6. Importantly for this case, according to Department policy the MA recipient spouse must transfer the assets within one year of becoming eligible (or prior to the annual renewal). Handbook, App. 18.4.6.1; §49.455(6)(a) of the statute says "as soon as practicable after the initial determination of eligibility," and the Department has allowed one year based upon that language. Failure to transfer the assets results in the assets being counted against the \$2,000 asset limit after the annual renewal.

As noted, the statute says merely that the assets must be transferred as soon as practicable. The Department has made a policy determination that defines the phrase to mean prior to the next annual review. It is a reasonable interpretation of the statutory phrase, but it is an interpretation that has meaning only if it is communicated to the MA recipient and her authorized representatives. Petitioner's son testified that he was never told of the need to transfer assets until the reapplication. I reviewed the case history. The case notes from the 2012 application do not mention the need to transfer assets. The November 30, 2012 notice titled "Information about Community Spouse Asset Share Calculation" does not tell the recipient about the need to transfer the assets, nor does the December 14, 2012 notice of decision informing petitioner of her eligibility. All recipients are provided a copy of the Department's Enrollment and Benefits booklet, but the booklet does not tell the recipient of the need to transfer assets to the community spouse in the section on Spousal Impoverishment.

I conclude, therefore, that to hold petitioner to the one-year policy for transferring assets, based upon the circumstances in this case, violates the statutory mandate. Petitioner was unable to transfer the assets to her

husband until it was practicable in January, 2014, after a Department representative first told her representative of the need to do so. I thus find that she remained below the asset limit in the months leading up to January, 2014.

CONCLUSIONS OF LAW

Because Department personnel or literature failed to inform petitioner of the need to transfer her assets to her community spouse, she remained below the MA asset limit until she was told and she thus could transfer the assets as soon as practicable.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to grant petitioner nursing home MA for the months of October through December, 2013 because she remained below the spousal impoverishment asset limit during those months. The county shall do so within 10 days 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 21st day of May, 2014

\sBrian C. Schneider
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 21, 2014.

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