



FH
[REDACTED]

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

In the Matter of

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

DECISION

MGE/156989

PRELIMINARY RECITALS

Pursuant to a petition filed April 21, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance, a hearing was held on July 15, 2014, by telephone. A hearing set for June 10, 2014, was rescheduled at the petitioner’s request.

The issue for determination is whether the agency correctly denied Long-Term Care/Institutional MA certification for November 2013 forward, due to excess assets.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
By: [REDACTED], daughter
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Shena Smith, ES Spec.
Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.

2. The petitioner applied for Long-Term Care/Institutional MA, a subset of Elderly/Blind/Disabled MA, on January 31, 2014. Backdated certification to October 2013 was requested. The petitioner's representative was advised that she would have to verify his assets by March 3, 2014.
3. Following a reminder on March 3, the requested asset verifications was received by the agency on March 3, 2014. The agency then subtracted the petitioner's \$1,296 (\$1,275 in 2013) monthly income from his financial account balances to determine if he was under the \$2,000 asset limit.
4. On March 5, 2014, the agency issued written notice to the petitioner advising that his application had been denied, with the exception of coverage for October 2013. The basis for denial was being over the \$2,000 asset limit.
5. The petitioner's assets consisted of his checking account, savings account, and [REDACTED] nursing home patient account. Those assets, after subtraction of his monthly income, totaled \$2,794.19 for November 2013, \$3,564.17 for December 2013, \$4,735.22 for January 2014, and \$5,786.68 (\$7082.68 - \$1,296) for February 2014.
6. The petitioner was incurring unpaid nursing home charges from November 2013 forward.

DISCUSSION

A single applicant for Institutional/Elderly-Blind-Disabled MA has to satisfy nonfinancial and financial tests to be found eligible. The petitioner has passed the nonfinancial tests. The agency has concluded that he has not passed the asset test, which is that a single person cannot have nonexempt assets exceeding \$2,000. Wis. Stat. §49.47(4)(b)3g; *Medicaid Eligibility Handbook (MEH)*, § 39.4.1, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

There is no disagreement that the petitioner's liquid assets (checking, savings account, nursing home personal account) totaled \$2,794 in November 2013, and went higher in subsequent months. That exceeds the limit. The petitioner did not supply documentation at hearing to show that his assets dropped below \$2,000 before the agency issued an application denial (except for October 2013) on March 5, 2014. Therefore, the best evidence available to me is that the assets remained above the limit through at least the date of denial. The agency's denial of coverage from November, 2013 onward will therefore be upheld.

Although the petitioner was incurring nursing home bills in November 2013 and beyond, the MA statute does not allow me to consider the petitioner's "net equity" (assets versus unpaid bills). Rather the statute is a simple declaration that a person cannot have assets over the limit:

(4) ELIGIBILITY.

(a) ...

(b) Eligibility exists if the applicant's property, subject to the exclusion of any amounts under the ... federal Social Security Act, does not exceed the following:

1. Subject to par. (bc), a home and the land used and operated in connection therewith or in lieu thereof a manufactured home or mobile home if the home ...is used as the person's or his or her family's place of abode.

2. Household and personal possessions.

2m. One or more motor vehicles as specified in this subdivision.

...

3. For a person who is eligible under par. (a) 3. or 4., funds set aside to meet the burial ...

3g. Liquid assets for a single person limited to:

a. In 1985, \$1,600.

b. In 1986, \$1,700.

c. In 1987, \$1,800.

- d. In 1988, \$1,900.
e. After December 31, 1988, \$2,000.

Wis. Stat. § 49.47(4)(b)3g [*emphasis added*]. This Division has issued decisions for over 25 years that always declare that asset “net equity” cannot be considered. Therefore, I cannot consider net equity here.

Additionally, the Department’s policy handbook contains the following instruction:

16.1 ASSETS INTRODUCTION

...

Do not count income as an asset in the month it was received when determining the countable asset amount.

Example 1: Mr. Johnson has \$2600.00 in his checking account for the month of March. Of that amount, \$700.00 is unearned income that he received in March. His countable asset amount is \$1900.00.

MEH, §16.1. The county agency has followed this instruction here, by subtracting the Social Security income each month.

Finally, the petitioner’s representative complained at hearing that staff at [REDACTED] nursing home advised her to retain a portion of the petitioner’s assets rather than pay as much as possible on the facility’s bill, as soon as possible, to get under the asset limit. That is unfortunate and surprising. The petitioner’s representative may wish to contact a free advocate to explore the possibility of getting [REDACTED] to write off part or all of its past due charges. Two such advocates are ABC for Health at (608) 261-6939 x 210, or Center for Patient Partnerships at (608) 890-0321.

CONCLUSIONS OF LAW

The county agency correctly denied the petitioner’s January 2014, EBD MA application for excess assets (except for October 2013).

THEREFORE, it is

ORDERED

That the petition 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 21st day of August, 2014

\sNancy J. Gagnon
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 August 21, 2014.

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