



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name and number]

This case was originally categorized as a divestment case with a MDV designation in the case number. However, at the hearing it became clear that the issue for appeal was not which monetary transfers constituted a divestment, but rather whether Petitioner's countable assets were below allowable limits. As such, the designation was changed to MGE, which is used for general Medicaid issues, such as asset determinations.

PRELIMINARY RECITALS

Pursuant to a petition filed April 29, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on July 31, 2014, at Waukesha, Wisconsin.

NOTE: The record was held open to give the Petitioner's attorney time to submit documentation of the marital property agreement and evidence of a stop payment on a check to Petitioner's spouse and evidence of a re-issued check for the same amount. Petitioner's attorney submitted a packet via e-mail that contained the marital property agreement, a statement from Petitioner's bank and a receipt for a cashier's check from that same bank. The packet has been marked as Exhibit 15 and entered into the record.

The issue for determination is whether Waukesha County Health and Human Services correctly determined that Petitioner was over the asset limit for Nursing Home Long Term Care benefits January 2014 to April 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted names of Petitioner]

Petitioner's Representative:

[Redacted name of Petitioner's Representative]

Respondent:

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

By: Julie Miller, Economic Support Specialist
and

Aina Bromberek, Economic Support Specialist Supervisor
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. During the times in question, the Petitioner had assets in accounts that are designated for the purposes of this appeal as MS-83706, MS-13706 and BV. (Exhibits 2, 3, 5, 11, 12, 13, and 15)
3. The marriage between Petitioner and her spouse is a second marriage. (Representation of [REDACTED])
4. Petitioner and her spouse entered into a marital property agreement. (Exhibit 15)
5. Petitioner and her spouse are now both institutionalized at the same nursing home. (Representation of [REDACTED])
6. Petitioner's spouse previously paid for Petitioner's nursing home expenses. (Representation of [REDACTED])
7. Petitioner's spouse's family has asked Petitioner to reimburse her spouse for Petitioner's nursing home care. (Representation of [REDACTED])
8. On January 27, 2014, Petitioner's power of attorney wrote a check to Petitioner's spouse in the amount of \$106,456.12. The check notes this payment to be a gift. (Exhibit 2, pgs. 13 and 23)
9. The family of Petitioner's spouse did not cash the check, so Petitioner's power of attorney issued a stop payment in March 2014. (Exhibit 15)
10. On March 12, 2014, the \$106,456.12 was transferred from the MS-83706 account to an account designated as BV. On March 14, 2014, BV issued a cashier's check for \$106,456.12 to Petitioner's spouse from the BV account. (Exhibit 15)
11. On April 14, 2014, the agency sent Petitioner a notice indicating that as of April 1, 2014, her application for Medicaid benefits was denied, in part, because she was over the asset limit. (Exhibit 6)
12. [REDACTED] on Petitioner's behalf, filed an appeal that was received by the Division of Hearings and Appeals on April 29, 2014. (Exhibit 1)
13. On June 23, 2014, the agency sent the Petitioner a notice indicating that her request for Medicaid benefits for January 2014 was denied because she was over the asset limit. (Exhibit 8)
14. On that same date, it sent the Petitioner a notice indicating that her request for benefits for February 2014 was denied because she was over the asset limit and because she had an unverified promissory note payment. (Exhibit 8)
15. Also on June 23, 2014, the agency sent the Petitioner a notice advising her that it had not yet made a decision concerning her Medicaid eligibility because they needed an explanation for the \$106,456.12 deposited and withdrawn on April 10, 2014. The notice further indicated that the explanation for the \$106,456.12 transactions needed to be provided by July 3, 2014, at which time the agency would make a determination concerning Petitioner's March 2014 eligibility/divestment period start date. (Exhibit 8)

16. On July 11, 2014, the agency sent Petitioner a notice indicating that her request for benefits for April 2014 was still denied because she was over the asset limit. (Exhibit 14)

DISCUSSION

In order to be eligible for Medicaid Benefits, a one person household must have assets below \$2000.00. *Medicaid Eligibility Handbook (MEH) §39.4.1* Money held in a checking or savings account must be counted as an asset. *MEH §16.1*

In determining eligibility for Medicaid benefits, the burden of proof falls on the applicant to show s/he meets all eligibility criteria. *Estate of Gonwa v. DHSS*, 265 Wis.2d 913, 668 N.W.2d 122, 2003 WI App 152.

January Assets

In January 2014, the Petitioner's assets consisted of money held in accounts MS-83706 and MS-13706. According to the bank statements, the ending balance of account MS-13706 was \$111,470 as of January 31, 2014 and the ending balance of account M-83706 was \$4754.65 (Exhibit 2, pgs. 5 and 8)

In determining the total countable assets, the agency deducted \$1651.10 from the balance of account M-83706, to account for Petitioner's Social Security Retirement Income. Thus, the agency calculated the Petitioner's assets to be:

\$111,470.00	M-13706
+ \$4754.66	M-83706
- \$1651.10	SSRE Income

\$114,573.56 Total Assets calculated by the Agency

Petitioner's attorney argues that from that total, the agency needs to deduct \$8,000 for a check written out to Petitioner's nursing home on January 27, 2014 and it needs to deduct the \$106,456.12 check written out to Petitioner's spouse on January 27, 2014. (See Exhibit 2, pgs. 22 and 23)

The issue is whether the money backing the \$106,456.12 check and the \$8,000 check may be considered assets.

Under Wis. Stats. §403.104(6) a check is considered a type of negotiable instrument, which is defined as, "an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if all of the following apply:

- (a) It is payable to bearer or to order at the time that it is issued or first comes into possession of a holder.
- (b) It is payable on demand or at a definite time.
- (c) It does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money..."

Wis. Stats. §403.104(1)

A negotiable instrument is a means by which a party may satisfy consideration for the performance of a contract. For example, the \$8000 check was a means by which Petitioner was paying the nursing home for services rendered for her care.

According to *MEH §16.2.1*, an asset is available when:

1. It can be sold, transferred, or disposed of by the owner or the owner's representative, and
2. The owner has a legal right to the money obtained from sale of the asset, and
3. The owner has the legal ability to make the money available for support and maintenance, and
4. The asset can be made available in less than 30 days.

Because Petitioner issued the check to satisfy a contract with the nursing home, she no longer had the legal ability to make the money available for her support and maintenance. If Petitioner stopped payment on that check and did not provide another means of payment to the nursing home, she would likely be in breach of her contract with the nursing home. As such, that outstanding check no longer meets the definition of an available asset under *MEH §16.2.1*, above. Thus, counsel is right in his assertion that the \$8000 check should not have been counted as an asset for January 2014.

However, the \$106,456.12 check to Petitioner's spouse is another matter. There is no evidence that the check was issued to satisfy any legally binding agreement or contract. If Petitioner stopped payment on the check, there would be no significant legal consequence to the Petitioner. Thus, the money backing the check could be disposed of by Petitioner or her representative as they saw fit; the Petitioner still had a legal right to the money; she had the legal ability to make the money available for her support and there is no indication that the Petitioner lacked the ability to stop payment on the check and make the money available in less than 30 days. Indeed, a stop payment was put on the check in March 2014; the funds were transferred to a different bank account on March 12, 2014 and reissued on March 14, 2014. There is no assertion that any of this was illegal. Accordingly, it is found that the money backing the \$106,456.12 check was an available / countable asset as defined by *MEH §16.2.1*.

Thus, the asset calculation for January 2014 should have been as follows:

	\$111,470.00	M-13706
+	\$4754.66	M-83706
-	\$1651.10	SSRE Income
-	\$8000.00	Nursing Home Payment

\$106,573.56 Total Assets

Because Petitioner's assets in January 2014 were over the \$2000 limit, she was not eligible for Medicaid benefits at that time.

February 2014 Assets

It is undisputed that the \$106,573.56 asset was still uncashed in February 2014. As such, the money backing that check was still a countable asset and Petitioner was still over the asset limit in February 2014.

March 2014 Assets

Per Exhibit 15, it appears the parties are in agreement that \$133.50 received in account MS 13706, in March 2014, should have been counted as income in that month and not an asset. However, there is still the issue of the \$106,573.56.

In March 2014 Petitioner's power of attorney stopped payment on the \$106,573.56 check, because the spouse's family had not cashed it. The funds were transferred to an account at BV and from that account, a cashier's check in the amount of \$106,573.56 was issued.

Counsel is correct that generally speaking, a payment on a cashier's check may not be stopped. If a cashier's check is lost or stolen, the party seeking replacement must complete an affidavit of loss and it can take 90-days for replacement to be made. See <http://banking.about.com/od/Cashiers-Checks/fl/Lost-or-Stolen-Cashiers-Check-No-Longer-Need-It.htm> So, if the Petitioner delivered the check to her spouse / spouse's family, it would no longer meet the definition of an available asset under *MEH §16.2.1*.

However, if the Petitioner retained the check, she could with some potential difficulty from her bank, request the money be returned to her account. I note that the receipt from BV indicated that the cashier's check was mailed to the Petitioner, not to her spouse. (See Exhibit 15) In the absence of evidence that the cashier's check was duly delivered to the spouse's family, there is insufficient evidence to support a finding that the \$106,573.56 was not a countable asset for March 2014.

April 2014

Looking at the BV bank statement attached to Exhibit 13, it indicates that another deposit and withdrawal involving the \$106,456.12 amount took place on April 10, 2014. Given the situation with the cashier's check in March 2014, without some explanation from BV for this transaction, it is unclear whether the funds from the cashier's check were again returned and re-issued as a check / cashier's check or whether some other transaction occurred. Thus, there is insufficient evidence to support a finding that the \$106,456.12 was an unavailable asset in April 2014.

Other Matters

I note that the purchase of a cashier's check, gives the appearance of a sharp practice intended solely for the purpose of making the Petitioner eligible for Medicaid. Petitioner should note that transfer of that money to her spouse, if completed might very well constitute a divestment under *MEH §17.14*.

In addition, because both spouses are in a nursing home, spousal impoverishment rules do not apply. Further, Wisconsin is a marital property state. So, even if the \$106,456.12 were in an account solely in the spouse's name, Petitioner would likely have legal entitlement to at least half of that money under Wis. Stat. §766.31, since the presumption is that all property of spouses is presumed to be marital property.

In order for that money to be considered unavailable, Petitioner would have to show:

1. She lacks the ability to provide legal access to the assets AND
2. No one else can access the assets, AND
3. A process has been started to get legal access to the assets.

MEH §16.2.1

Otherwise, in the absence of proof that the money would be unavailable for 30 days or more, it would still be a countable asset under *MEH §16.2.1*, and Petitioner would still be over the asset limit.

CONCLUSIONS OF LAW

The agency correctly determined that the Petitioner was over the asset limit for Nursing Home Long Term Care Medicaid benefits for January 2014 forward.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of August, 2014.

\sMayumi M. Ishii
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 August 11, 2014.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability
Attorney Charles Stansberry Jr.