



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MQB/157310

PRELIMINARY RECITALS

Pursuant to a petition filed May 01, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on July 09, 2014, at Janesville, Wisconsin.

The issue for determination is whether the county agency met its burden of proof to establish that it correctly discontinued the petitioner's QMB benefits effective May 1, 2014, due allegedly to failure to verify assets.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Victoria O'Donnell, ESS

Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 70 year old resident of Rock County.
2. The petitioner receives COP Community Waivers program and QMB benefits.

3. The county agency sent a March 24, 2014 Notice of Decision to the petitioner stating that her Community Waiver MA and QMB benefits were discontinued effective May 1, 2014, due to petitioner not verifying her alleged asset of a condominium timeshare. See Exhibit 2.
4. The county agency was unable to establish with any reliable written evidence that petitioner owned a condominium timeshare, or even provide the address of such alleged timeshare asset.
5. Petitioner denied owning any timeshare interest in any condominium during the period in question (February - May, 2014).
6. The county agency failed to establish any valid basis for discontinuing the petitioner's QMB benefits as of May 1, 2014.

DISCUSSION

The county agency has the burden of proof to establish a prima facie case that it correctly discontinued petitioner's QMB benefits as of May 1, 2014. During the July 9, 2014 hearing, the county agency representative alleged in vague terms that petitioner might own a timeshare interest in some condominium perhaps in the [REDACTED], WI area. However, the county agency was unable to establish with any reliable written evidence that petitioner owned a condominium timeshare, or even provide the address of such alleged timeshare asset. The county agency alleged, without any documentation, that petitioner had "unpaid dues" for the alleged timeshare. However, the agency had no written proof whatsoever that petitioner owned any condominium during the period in question of February - May, 2014, or even since January, 2014.

During the hearing, petitioner convincingly testified that she did not own any timeshare interest in a condominium during the period of about February - May, 2014. As a result, there was no condominium asset that petitioner needed to verify to the county agency. Accordingly, for the above reasons, I conclude that the county agency has failed to meet its burden of proof to establish a prima facie case that it correctly discontinued petitioner's QMB benefits effective May 1, 2014.

CONCLUSIONS OF LAW

The county agency has failed to meet its burden of proof to establish a prima facie case that it correctly discontinued petitioner's QMB benefits effective May 1, 2014.

THEREFORE, it is

ORDERED

The matter is remanded to the county agency with instructions to restore petitioner's QMB benefits retroactive to May 1, 2014, within 10 days of the date 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 23rd day of July, 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 July 23, 2014.

Rock County Department of Social Services
Division of Health Care Access and Accountability