



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MGE/157537

PRELIMINARY RECITALS

Pursuant to a petition filed May 08, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Douglas County Department of Human Services in regard to Medical Assistance, a hearing was held on June 10, 2014, at Superior, Wisconsin.

The issue for determination is whether the petitioner filed her appeal on time.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Tom Ostrander

Douglas County Department of Human Services
1316 North 14Th Street
Suite 400
Superior, WI 54880

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [redacted]) is a resident of Douglas County.
2. The petitioner applied for institutional medical assistance on December 3, 2013. On February 11, 2014, the county agency determined that she was ineligible because a life insurance policy put her over the program's asset limit.

3. On March 27, 2014, the petitioner verified that she had transferred the life insurance policy to a funeral home. The county agency found her eligible as of March 1, 2014.
4. The petitioner seeks eligibility retroactive to December 18, 2013.

DISCUSSION

A person is usually ineligible for medical assistance if her available assets exceed \$2,000. Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. §§ 49.46(1) and 49.47(4). Money properly set aside for burial or funerals is not counted toward this limit. Wis. Stat. § 49.47(4)(b)2r and 3. The petitioner applied for assistance on December 3, 2013. The county agency denied her application on February 11, 2014, because a life insurance policy put her over the program's asset limit. That policy was meant to cover her burial costs, but the agency determined that because she had not transferred it to funeral home it was still available. She reapplied. After she verified on March 27, 2014, that she had transferred the policy to the funeral home, the agency found her eligible as of March 1, 2014. She appealed on May 8, 2014, and seeks eligibility retroactive to December 18, 2013.

Those challenging a negative medical assistance decision must do so within 45 days of the date of the decision or the date it takes effect, whichever is later. Wis. Admin. Code § HA 3.05(3). If an appeal is late, the Division of Hearings and Appeals loses its jurisdiction to consider it. The county agency determined that the life insurance policy was an available asset on February 11, 2014. If she wished to appeal this finding she had to do so by March 28, 2014. She did not appeal until May 8, 2014. It does not matter that the agency made a later decision concerning her benefits within 45 days of her appeal because later decisions do not reinstate rights lost by the failure to appeal earlier decisions. I am aware that the petitioner's representatives believe that they received bad advice from the nursing home, but the county agency is not liable for the advice given by others. If the petitioner's representatives believe that they were misled, any claim they may have is against the person or group misleading them. Those claims would have to be filed in circuit court because the Division of Hearings and Appeals has no jurisdiction to consider them.

CONCLUSIONS OF LAW

There is no jurisdiction to consider the petitioner's request for benefits retroactive to December 18, 2013, because her appeal is late.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 11th day of July, 2014

\sMichael D. O'Brien
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 11, 2014.

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