



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/157838

PRELIMINARY RECITALS

Pursuant to a petition filed May 22, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services ["MiLES"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on July 1, 2014.

The issue for determination is whether it was correct for MiLES to discontinue petitioner's MA Family Care Program ["FCP"] eligibility effective June 1, 2014.

There appeared at that time via telephone 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: Julie Salmeron, Income Maintenance ["IM"] Specialist
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

OTHER PERSONS PRESENT:

[REDACTED], petitioner's son (39 years old)
[REDACTED], FCP Case Manager

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 56 years old) is a resident of Milwaukee County, Wisconsin.
2. Petitioner owns a house; petitioner does not live in the house and the house is not for sale.
3. The house petitioner owns is worth in excess of \$2,000 (it has an estimated value of over \$33,000); the house is paid for and there is no mortgage.
4. By a letter notice dated May 19, 2014 entitled *About Your Benefits* MiLES discontinued petitioner's FCP eligibility effective June 1, 2014.

DISCUSSION

FCP is available to eligible persons only through enrollment in a Care Management Organization ["CMO"] under contract with the Wisconsin Department of Health Services ["DHS"]. Wis. Admin. Code § DHS 10.41(1) (December 2013). A person may be eligible for FCP, but yet not entitled to enroll in a CMO. Wis. Admin. Code § DHS 10.36(1) (December 2013). A person who is found eligible for FCP but who does not meet certain conditions is not entitled to FCP benefits. Wis. Admin. Code § DHS 10.36(3) (December 2013). Such persons may pay privately for CMO services. Wis. Admin. Code §§ DHS 10.36(3) & 10.37 (December 2013).

The FCP asset limit for 1 person is \$2,000.00 (the same as the MA asset limit for 1 person). Wis. Stat. § 46.286(1)(b)2m.a. (2011-12); Wis. Admin. Code § DHS 10.36(1)(b)2. (December 2013) & Wis. Admin. Code § DHS 10.34(2) (December 2013); See also, Wis. Stat. § 49.47(4)(b)3g.e. (2011-12); see also, Wis. Admin. Code § DHS 103.04(2) (December 2008) & *Medicaid Eligibility Handbook* ["MEH"] Chapter 16, 29.3.2 & 39.4.1. Petitioner's ownership of her house puts her over the FCP asset limit. Therefore, it was correct to discontinue petitioner's FCP eligibility.

Petitioner states that she does not live in the house because it is not wheelchair accessible. Petitioner argues that the house needs a lot of work. However, she does not deny that it is worth in excess of \$2,000.

If real property, such as petitioner's house, is listed for sale with a realtor it is considered an unavailable asset and does not count toward the FCP asset limit. MEH 16.2.2.1 & 16.9.1. Petitioner's house is not for sale. Petitioner argues that she cannot sell it because of its condition. However, it could be listed for sale at a reduced price that reflects its true value. The house must be sold for Fair Market Value ["FMV"]. A sale for less than FMV may result in divestment. See, Wis. Stat. § 49.453(2)(a) (2011-12); See also, Wis. Admin. Code § DHS 103.065(4)(a) (December 2008); MEH 17.2.1 et. seq.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct for MiLES to discontinue petitioner's FCP eligibility effective June 1, 2014.

NOW, THEREFORE, it is

ORDERED

that the petition for review herein be and the same is hereby 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 9th day of July, 2014

\sSean P. Maloney
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 July 9, 2014.

Milwaukee Enrollment Services
Office of Family Care Expansion