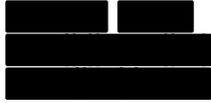




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MGE/157877

PRELIMINARY RECITALS

Pursuant to a petition filed May 27, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Polk County Department of Social Services in regard to Medical Assistance, a hearing was held on August 19, 2014, at Balsam Lake, Wisconsin. Hearings scheduled for June 13, 2014, and July 18, 2014, were rescheduled at the petitioner's request.

The issue for determination is whether the petitioner's assets exceed the medical assistance program's limit.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: Nancy Randall

Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [redacted]) is a resident of Polk County. Her husband lives in the community

2. The petitioner applied for medical assistance through a community waiver on March 31, 2014, requesting eligibility retroactive to December 2013. The county agency denied her request on April 9, 2014, because her assets exceeded the program's limit.
3. The county agency set the petitioner's asset limit under the spousal impoverishment provisions of the medical assistance program at \$83,225.62.
4. As of August 2014, the petitioner and her husband had \$215,578 in assets.

DISCUSSION

Medical assistance rules usually limit eligibility to those whose assets do not exceed \$2,000. But an institutionalized person can approach or reach this limit by allocating assets to her spouse who remains in the community. This provision is meant to prevent the community spouse from falling into poverty. *See* Wis. Stat. § 49.455. The amount a spouse can allocate depends upon the couple's total assets when the agency assesses them on or after the first continuous period of institutionalization. Wis. Stat. § 49.455(5)(a)2. The law currently allows couples whose liquid assets are between \$100,000 and \$234,480 to assign half of the assets to the community spouse. Wis. Stat. § 49.455(6)(b); *Medicaid Eligibility Handbook*, § 18.4.3. The county agency set the petitioner's asset limit at \$83,225.62. It denied her application after determining that her and her husband's assets exceed \$200,000.

At the hearing, I pointed out that it was difficult to determine the couple's assets because the agency had not broken them down. I suggested that the agency provide documentation that supported its position in more detail and that the petitioner's attorney submit a written reply after receiving this information. The agency submitted a large amount of documentation within a month of the August 19, 2014, hearing. As of October 2, 2014, I had not heard from the petitioner's attorney, so I sent her an email asking her to tell me when she would respond to the agency. The next week, after still not hearing from her, I called her office and left a message with her secretary explaining that I needed her reply to write my decision. As of October 24, 2014, I have not heard from her. Therefore, I will base the decision solely on the information provided by the agency.

Even with the material submitted by the agency, it is difficult to determine exactly the amount of assets the petitioner and her husband have. The evidence at the hearing indicated that she applied on March 31, 2014, and was denied on April 9, 2014. But the only decision I have a copy of indicates that the agency denied a May 1, 2014, application on August 18, 2014. That notice indicates that the total asset limit is \$83,225.62, which is consistent with all of the other evidence. But it indicates that the couple's current assets are \$215,578. Other documents seem to indicate that the total assets are somewhere between \$151,000 and \$161,000. Although more precision would be helpful, it is unnecessary because regardless of how one views the evidence, the assets exceed \$83,225.62. Therefore, I will uphold the denial.

CONCLUSIONS OF LAW

The county agency correctly determined that the petitioner is ineligible for medical assistance because her assets exceed the spousal impoverishment limit.

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.

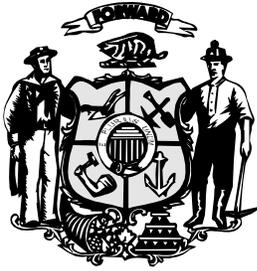
APPEAL TO COURT

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 24th day of October, 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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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on October 24, 2014.

Polk County Department of Social Services
Division of Health Care Access and Accountability
Attorney [REDACTED] [REDACTED]