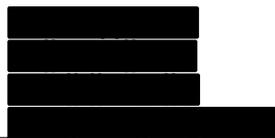




STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

MGE/158030

**PRELIMINARY RECITALS**

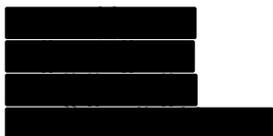
Pursuant to a petition filed May 30, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on July 15, 2014, at West Bend, Wisconsin.

The issue for determination is whether the agency properly determined Petitioner’s eligibility for MA benefits.

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: Ken Benedum

Washington County Department of Social Services  
333 E. Washington Street  
Suite 3100  
West Bend, WI 53095

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Washington County. She has been a resident of  since February 25, 2013.

2. On March 26, 2014, an application for Medicaid was submitted to the agency on behalf of the Petitioner. A request for a three month back date to December, 2013 was made. The application reported the Petitioner is married but did not include her spouse. The application noted the Petitioner has no assets. The application was not signed by the Petitioner or by her husband but by [REDACTED]. No guardianship papers or POA was included with the application.
3. On April 7, 2014, the agency issued a Notice of Proof Needed to the Petitioner's representative requesting verification of bank accounts and other assets for 2013 and 2014. The notice also requested guardianship papers. The due date for the requested verifications was April 28, 2014. The agency received none of the requested verifications by the due date.
4. On April 29, 2014, the agency issued a Notice of Decision to the Petitioner's representative informing her that the Petitioner's application was denied due to failure to provide requested verifications.
5. Petitioner's husband has been uncooperative with providing verifications. All assets were in the husband's name so the Petitioner's representatives were unable to get verifications for all but one bank account. On July 14, 2014, the Petitioner's husband was court-ordered to comply with requests for verification.
6. On July 28, 2014, another application was submitted on Petitioner's behalf with all verifications.
7. The agency determined the Petitioner was over program limits for assets for the period of December, 2013 – January, 2014.
8. On August 14, 2014, the agency issued a Notice of Decision to the Petitioner's guardian informing the guardian that the Petitioner is eligible for MA benefits effective July 1, 2014. The notice also informed the guardian that the Petitioner was found not to be eligible for benefits from April 1, 2014 – June 30, 2014 due to assets exceeding the program limit. The agency determined the Petitioner's assets as follows:
 

April, 2014	\$162,098.34
May, 2014	\$171,381.03
June, 2014	\$154,219.34
9. On May 30, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

Medical Assistance (MA) is supposed to pay for "health care services for qualified persons whose financial resources are inadequate to provide for their health care needs." Wis. Admin. Code, § DHS 101.01. Generally, a person cannot be eligible if her assets exceed \$2,000 or, if married, her and her spouse's combined assets exceeded \$3,000. Wis. Stat. § 49.47(4) and see Medicaid Eligibility Handbook (MEH) § 39.4. When one spouse went into a nursing home and the other remained in the community, this asset limit often created a hardship on the community spouse because he would have to pay for his spouse's nursing home care until their assets were almost entirely depleted. In response, the state and federal governments enacted laws that increased the asset limit for couples in this situation. These rules allow the institutionalized spouse to allocate assets to the community spouse. The amount of assets that a couple can hold and allocate is not unlimited. In general, after considering the \$2,000 asset limit for an individual, a couple is eligible if their combined assets do not exceed \$52,000. If their assets are between \$100,000 and \$234,480, the institutionalized spouse can assign half of the assets to the community spouse. The agency determines the total value of the ownership interest of the institutionalized spouse plus the ownership interest of the community spouse in resources as of the beginning of the first continuous period of institutionalization beginning after September 29, 1989. The spousal share of resources equals one-half of that total value. Wis. Stat. § 49.455(5)(a)1. Based on the agency's asset assessment, the combined assets of the Petitioner and her husband, including the \$2,000 individual limit,

cannot exceed \$91,680.84. Wis. Stat. § 49.455(6)(b); MEH, § 18.4.3. If the assets do exceed this amount, the institutionalized spouse is ineligible for full MA benefits until the assets are spent down to this level.

MA rules require recipients to verify various information, including assets. Wis. Admin. Code, § DHS 102.03(3). Agencies may deny applications if an applicant “is able to produce required verifications but refuses or fails to do so.” within 10 days of the date they are requested...” MEH, § 20.7.1.1. See also Wis. Admin. Code § DHS 102.03(1). Because spousal impoverishment eligibility depends upon the assets of both spouses, both spouses are expected to sign the application and verify assets. Occasionally, a belligerent community spouse would refuse to cooperate and sign the application. In order to protect an institutionalized spouse, who may have had no control over the other spouse’s behavior, the Department allowed institutionalized spouses in this situation to have their eligibility determined without regard to their spouse’s assets. MEH, § 2.5.2. (Release 09 04) However, what was meant to be a rare occurrence began happening more frequently as recipients took advantage of this loophole and their spouses simply refused to sign the application. This undermined the legislature’s intent by allowing an institutionalized person whose household held over \$52,000 in assets to become eligible immediately. In response, the Department changed its policy so that as of November 11, 2013, if the community spouse refused to sign an application and verify his assets or would not provide this information during the renewal, the agency had to deny the application. MEH, § 2.5.3. The Department declared in BEPS/DFS Operations Memo 13-38 that this “means that ‘Just say no’ is no longer a viable strategy for shielding assets.” The authority for the agency’s action is found in Wis. Stat. § 49.455(5)(e), which states: “The department may deny to the institutionalized spouse eligibility for Medical Assistance if, when requested by the department, the institutionalized spouse and the community spouse do not provide the total value of their assets and information on income and resources to the extent required under federal Medicaid law or sign the application for Medical Assistance.”

In this case, the application filed on March 26, 2014 was not signed by either the Petitioner or her husband and verification of assets was not produced as requested. I recognize that the Petitioner’s husband was not cooperative at the time but the policy effective November 11, 2013 is clear that the agency is to deny applications when a spouse is uncooperative with providing verifications. In this case, I note that the agency has produced evidence to demonstrate that even if the Petitioner’s husband had cooperated and provided the requested verifications, the Petitioner was over the asset limit until July, 2014.

Based on the evidence presented, the agency properly denied the Petitioner’s MA application of March 26, 2014 including the request for a backdate of eligibility to December, 2013.

### **CONCLUSIONS OF LAW**

The agency properly denied the Petitioner’s MA application of March 26, 2014 including the request for a backdate of eligibility to December, 2013.

**THEREFORE, it is**

**ORDERED**

That the Petitioner’s appeal 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).

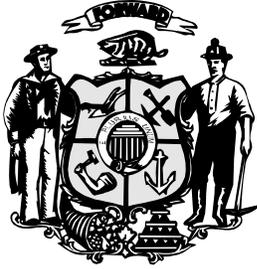
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson 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 12th day of September, 2014

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\sDebra Bursinger  
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 September 12, 2014.

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