



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

In the Matter of

[REDACTED]
[REDACTED]
c/o Atty. [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDV/158195

PRELIMINARY RECITALS

Pursuant to a petition filed June 5, 2014, under Wis. Stat., §49.45(5), to review a decision by the Northern Economic Consortium to deny Medical Assistance (MA), a hearing was held on September 24, 2014, by telephone. Hearings set for July 17 and August 21, 2014 were rescheduled at the petitioner’s request.

The issue for determination is whether assets were over the limit when petitioner applied for MA.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o Atty. [REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Atty. [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Lisa Strop
Northern Economic Consortium
10610 Main St., Suite 224
Hayward, WI 54843

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES# [REDACTED]) is a resident of Iron County.
2. Petitioner applied for MA for his wife on April 24, 2014. In reviewing eligibility the agency worker found that petitioner had gifted \$28,000 to a son in November, 2013. By a notice dated June 3, 2014, the agency denied MA due to divestment, with a penalty period of 114 days.

3. Although the money was intended as a gift, it was placed into a bank account with both the son and petitioner as holders.
4. The agency determined that under spousal impoverishment rules the asset limit for petitioner's wife was \$52,000.
5. Petitioner's wife died on May 12, 2014. Throughout March, April, and May, 2014, assets were above \$52,000 if the funds in the account held by petitioner and his son were considered to be part of petitioner's assets.

DISCUSSION

The federal Medicaid Catastrophic Coverage Act of 1988 (MCAA) included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat., §49.455(1).

When initially determining whether an institutionalized spouse is eligible for MA, county agencies are required to review the combined assets of the institutionalized spouse and the community spouse. MA Handbook, Appendix 18.4.1. All available assets owned by the couple are to be considered. Homestead property, one vehicle, and anything set aside for burial are exempt from the determination. The couple's total non-exempt assets then are compared to an "asset allowance" to determine eligibility.

The asset allowance for this couple was \$50,000. MA Handbook, App. 18.4.3, which is based upon Wis. Stat., §49.455(6)(b). \$2,000 (the MA asset limit for the institutionalized individual) is then added to the asset allowance to determine the asset limit under spousal impoverishment policy. If the couple's assets are at or below the determined asset limit, the institutionalized spouse is eligible for MA. If the assets exceed the above amount, as a general rule the spouse is not MA eligible.

During the hearing it became apparent that petitioner's wife was not eligible for MA regardless of how the funds transferred in November, 2013 were classified. If they were a gift, then the agency correctly determined that a divestment occurred and petitioner's wife would not have been eligible for MA for the period up to her death. If the funds were considered to be part of the household assets, the assets were over the \$52,000 limit. Unlike divestment, there is no penalty period for assets; a person is ineligible for any period or day that assets are above the limit. I conclude that the agency's denial of MA was correct.

CONCLUSIONS OF LAW

Petitioner's wife was ineligible for MA during the period she was in a nursing home because assets were above the MA limit during that period.

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 2nd day of October, 2014

\sBrian C. Schneider
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 October 2, 2014.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability
Attorney [REDACTED] [REDACTED]