



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MGE/158295

PRELIMINARY RECITALS

Pursuant to a petition filed June 11, 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 July 18, 2014, at Balsam Lake, Wisconsin.

The issue for determination is whether the petitioner can receive institutional medical assistance retroactively if she was in a medical facility less than 30 days.

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



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.
2. The petitioner first applied for institutional medical assistance on December 19, 2013. The county agency denied that application on January 21, 2014.

3. The petitioner reapplied for institutional medical assistance on March 20, 2014. The county agency denied that application because she was institutionalized less than 30 days.
4. The petitioner entered the hospital on November 17, 2013, went from there directly to the nursing on December 8, 2013, and was discharged on December 12, 2013.

### **DISCUSSION**

The petitioner seeks coverage of her hospital and nursing home stay that extended from November 17, 2013, through December 12, 2013. She first applied for institutional medical assistance on December 19, 2013. The county agency denied that application on January 21, 2014. Because she did not appeal, within 45 days, that denial cannot be reviewed. *See* Wis. Admin. Code, § DHA 3.05(3). She reapplied on March 20, 2014. The agency again denied her appeal, but because medical assistance rules state that “eligibility shall begin on the date on which all eligibility requirements were met, but no earlier than the first day of the month 3 months prior to the month of application” she can potentially receive benefits retroactive to December 1, 2013. Wis. Admin. Code § DHS 103.08(1).

The only issue is whether the petitioner met the definition of being institutionalized. Medicaid policy directs workers to consider someone institutionalized if she has resided in a “medical institution for 30 or more consecutive days” or is “likely to reside in a medical institution for 30 or more consecutive days, as attested to by the medical institution.” *Medicaid Eligibility Handbook*, § 27.4.1. Although she was institutionalized less than 30 days, she contends that she should receive medical assistance because *Medicaid Eligibility Handbook*, § 2.8.2., instructs workers to “[c]ertify the person for any backdate month in which s/he would have been eligible had s/he applied in that month.” She contends that when she went into the nursing home she was expected to be there for 30 days, which a medical person has attested to. Thus, if she had applied then, she would have eligible.

I disagree. *Medicaid Eligibility Handbook*, § 2.8.2. gets its authority from Wis. Admin. Code § DHS 103.08(1), which states that eligibility begins when all eligibility requirement are met. Obviously, if a person is just entering a nursing home, it is not always possible to determine if she will remain there for 30 days. Nevertheless, medical facilities and recipients require some certainty about financial matters, and decisions are made with the best evidence available at the time the decision is made. If a person applies when she enters a nursing home, the agency makes an educated guess based upon whatever medical information it has about whether she will remain there for 30 days. If she does not apply until after she leaves the nursing home, this enlightened speculation is unnecessary because with hindsight the agency can now determine the exact length of the stay. If, as the petitioner argues, the policy actually requires the agency to look at the more speculative evidence available when the length of the stay is unknown, the policy would require the agency to deny retroactive benefits to someone who had been institutionalized for two months but had been expected to be there for only a couple weeks. In this matter, when the petitioner applied for benefits, there was no doubt that she had not been institutionalized long enough to qualify for benefits. Therefore, the county agency correctly denied her application.

### **CONCLUSIONS OF LAW**

The county agency correctly determined that the petitioner was ineligible for institutional medical assistance because she was not institutionalized for 30 days.

**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 31st day of July, 2014

---

\sMichael D. O'Brien  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 31, 2014.

Polk County Department of Social Services  
Division of Health Care Access and Accountability  
liz.██████@co.polk.wi.us