



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/158380

PRELIMINARY RECITALS

Pursuant to a petition filed June 17, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on August 13, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency erred in its termination of FCP eligibility at renewal.

There appeared at that time and place 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

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner applied for FCP.
3. In April 2013 there was an asset determination of \$52,000.
4. Petitioner was found eligible for the FCP.

5. At the end of 12 months, petitioner completed a renewal and her assets remained over \$2,000 particularly in the form of a Prudential life insurance policy with cash surrender value exceeding \$2,000 at the time of renewal.
6. On May 19, 2014, the agency sent a notice to petitioner informing her that her FCP eligibility would terminate effective June 1, 2014.
7. Petitioner appealed.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

FCP, like regular Medical Assistance (MA), has an asset limit of \$2,000 for a one-person household. Wis. Stat., §46.286(1)(b)2m.a; Wis. Admin. Code, §DHS 10.34(2). In the past there was FCP eligibility for individuals “not eligible for” MA under Wis. Admin. Code, §DHS 10.34(3), but that eligibility status was discontinued July 1, 2008. See MA Handbook, Appendix 29.3.2.

Spousal impoverishment provisions allow eligibility for MA if the assets were below the limits set forth in MEH § 18.4.3. In this case, petitioner was eligible for MA, but the asset transfer provisions of MEH § 18.4.6.1 required a transfer of assets within 12 months to a level below \$2,000. This transfer was not accomplished. Petitioner’s eligibility may be re-established when assets are reduced.

The law and policy makes no provision for ignoring the asset limit. As noted, outstanding debts cannot be deducted, and there is no discretion given for unusual situations. While I believe that petitioner did not understand the obligation to reduce assets, neither the local agency nor the Division of Hearings and Appeals has authority to grant an exception to the asset limit. I must conclude, therefore, that the agency’s denial of FCP eligibility for June 2014 was correct.

CONCLUSIONS OF LAW

The agency did not err in its termination of FCP.

THEREFORE, it is

ORDERED

That this 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 2nd day of September, 2014

\sJohn P. Tedesco
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 September 2, 2014.

Milwaukee Enrollment Services
Office of Family Care Expansion