



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/158414

PRELIMINARY RECITALS

Pursuant to a petition filed June 17, 2014, under Wis. Stat., §49.45(5), to review a decision by the Green County Dept. of Human Services to discontinue Medical Assistance (MA), a hearing was held on July 23, 2014, by telephone.

The issue for determination is whether items purchased using petitioner's money must be counted in her MA asset calculation.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Katie Neuenschwander
Green County Dept. of Human Services
N3152 State Road 81
Monroe, WI 53566

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a nursing home resident of Green County. She was eligible for nursing home MA until the county action.
2. In April, 2014, petitioner received \$49,105 from the sale of her home and an insurance settlement. Petitioner's daughters, acting on her behalf, were told that the money could be spent

down to make petitioner eligible again. They paid a number of bills, and purchased a number of items for petitioner.

3. Among the items purchased were a watch and four necklaces from [REDACTED] for \$19,865, and a television, I-Pad, VCR, and related electronics from Best Buy for \$8,000.
4. The county workers reviewed the purchases and sought assistance from the Department's policy call center. In tandem they determined that the items, particularly the jewelry, had to be counted as assets. By a notice dated June 16, 2014, the county informed petitioner that MA would end July 1 because assets were over the limit. Benefits were continued pending this decision.

DISCUSSION

The MA asset limit for an individual is \$2,000. Wis. Stat., §49.47(4)(b)3g. If assets are above that limit, the person is not eligible for MA. The statute does not allow for outstanding debts to be deducted from assets, nor does it provide any exceptions for unusual situations.

Certain assets are exempt, and it is evident that petitioner's daughters sought to purchase items that would be considered exempt. Wis. Stat., §49.47(4)(b)2 exempts "Household and personal possessions," with no qualifying value amount. However, the Wisconsin Administrative Code, §DHS 107.03(8) exempts "Household and personal effects of reasonable value, considering the number of members in the fiscal test group."

The MA Handbook, Appendix 16.7.1.1 clarifies household goods as follows:

Household goods include:

1. Items of personal property, found in or near the home, that are used on a regular basis; and
2. Items needed by the household for maintenance, use and occupancy of the premises as a home.

Examples of household goods include but are not limited to:

1. Furniture,
2. Appliances,
3. Electronic equipment such as personal computers and television sets....

Personal effects are clarified at App. 16.7.1.2 and .3:

.2 Personal effects are:

1. Items of personal property originally worn or carried by the individual, or
2. Articles otherwise having an intimate relation to the individual.

Examples of personal effects include but are not limited to:

1. Personal jewelry including wedding and engagement rings,
2. Personal care items,
3. Educational or recreational items such as books or musical instruments....

.3 Personal property that an individual acquires or holds because of its value or as an investment:

1. Is a countable resource (asset); and
2. Is not considered to be a household good or personal effect.

Other personal property items include, but are not limited to:

1. Gems acquired or held because of their value or as an investment,
2. Jewelry that is not worn or held for family significance, and
3. Collectibles acquired or held because of their value or as an investment.

Note that I left out some examples that clearly do not apply in this case.

Petitioner's daughters [REDACTED] and [REDACTED] were the most active on her behalf, and both testified at the hearing. With regard to the electronics, they explained that the TV and VCR were to be used by petitioner in her nursing home room, and that the I-Pad was meant to be used by the family to store and show family photos, although petitioner herself was unable to operate the I-Pad. As it turned out petitioner could not use the VCR at the nursing home, and [REDACTED] wrote a personal check to buy the VCR back from petitioner. Obviously the TV and I-Pad were expensive items, but the law and policy appear to say that if the electronics are used regularly by the MA recipient, they are exempt assets.

The jewelry is also difficult. The watch was purchased for approximately \$5,000, and the necklaces were purchased for the over \$14,000; however, the daughters testified that [REDACTED] would not take the necklaces back, and other dealers offered no more than \$2-3,000 total for them when they shopped them recently. The daughters testified that the intent was that petitioner would wear the necklaces and in fact was wearing one that day, and she also would wear the watch, at least occasionally.

I conclude that the TV is exempt. No matter how expensive it is, if it is used by petitioner regularly it falls within the Handbook description at App. 16.7.1.1.

The I-Pad, however, is not exempt. I cannot find that using an expensive electronic device occasionally to show photos meets the standard that it be used regularly and that it be needed for occupancy of the residence.

I conclude that the jewelry is exempt. Looking at the interpretation at Appendices 16.7.1.2 and .3, the jewelry items were meant to be "originally worn or carried by" petitioner. They are not investments; in fact, based upon the daughters' experience, they lost 80% of their value as soon as they left [REDACTED]. While it might be disconcerting that the daughters purchased these items instead of using the money to pay for petitioner's care, I cannot conclude that the jewelry items fail the exemption test. It is not a clear-cut case by any means, but because the items were purchased for use by petitioner, and not as investments, I find that they are exempt personal property.

The matter is complicated by the fact that [REDACTED] returned the watch to [REDACTED] in June, and the store gave petitioner back \$4,681 for it, meaning that as of July 1, 2014, petitioner was over the asset limit with that money alone, with the value of the I-Pad and the \$500 check from [REDACTED] being considered as well. Despite the above discussion regarding the exempt items, the county correctly sought to close MA effective July 1, 2014 because petitioner had assets over \$2,000. I thus will dismiss the appeal because the action taken was done so correctly even if a portion of the reasoning was incorrect. The parties will have to work together to determine future eligibility.

CONCLUSIONS OF LAW

1. A television and jewelry purchased for petitioner's use are exempt items of personal property for MA purposes.
2. An I-Pad that petitioner is unable to use on her own and that would be used only infrequently is not an exempt asset.

3. The county correctly sought to close MA effective July 1, 2014 because petitioner's assets, including funds from the return of a watch and the non-exempt I-Pad, had value above \$2,000.

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 25th day of July, 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 July 25, 2014.

Green County Department of Human Services
Division of Health Care Access and Accountability