



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAP/158449

PRELIMINARY RECITALS

Pursuant to a petition filed June 20, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the St. Croix County Department of Human Services in regard to Medical Assistance, a hearing was held on July 17, 2014, at New Richmond, Wisconsin.

The issue for determination is whether a house the petitioner owns counts toward her Medicaid Purchase Plan asset limit.

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: Jen Feyereisen

St. Croix County Department of Human Services
1445 N. Fourth Street
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of St. Croix County.
2. The Department notified the petitioner on May 28, 2014, that she would be eligible for medical assistance under the Medicaid Purchase Plan as of July 1, 2014. On June 3, 2014, it notified her that she would be ineligible as of July 1, 2014, because her assets exceeded the program's limit.

3. The petitioner moved from her house to an apartment because her disability prevents her from maintaining the house. She continues to own the house.
4. On May 24, 2014, the petitioner signed a lease with ██████ that allows him rent the petitioner's house with the option to purchase it. The lease runs from June 1, 2014, through May 31, 2015. During this period, the petitioner cannot lease or sell the house to anyone else. Pursuant to the lease, ██████ gave the petitioner a \$1,500 deposit that she would apply toward the purchase price if he followed through and bought the property. If he does not purchase the property, he will forfeit the deposit.

DISCUSSION

The petitioner seeks medical assistance through the Medicaid Purchase Plan, which allows disabled working people to receive medical assistance. Wis. Stat. § 49.472(3)(a). Recipients cannot have more than \$15,000 in assets. Wis. Stat. § 49.472(3)(b). Real estate is generally a countable asset if the person does not live on the property unless it is listed for sale or used in a trade or business. *Medicaid Eligibility Handbook*, § 16.9. Wisconsin policy holds that a property is considered to be used in a trade or business if it is operating for the "self-support" of the person. *Id.* § 15.6.3.1. Federal law pertaining to determining the assets of disabled persons forbids requiring a recipient to dispose of real estate that cannot be sold because "its sale is barred by a legal impediment." 42 USC 1382b(b)

The Department initially found the petitioner eligible for the Medicaid Purchase Plan but reversed its decision after determining that a house she no longer lived in was a countable asset. She had moved out of the house because her disability prevented her from maintaining it. In May 2014, she found someone interested in buying the house but who lacked the credit to obtain a loan. That person, ██████, signed a lease with her on May 24, 2014, that allowed him rent the house with the option to purchase it. Although the lease runs from June 1, 2014, through May 31, 2015, both parties expect ██████ to be able to obtain financing to buy the house by December 2014. The lease protects the petitioner by requiring ██████ to pay a \$1,500 deposit that he will forfeit if he does not buy the house. The lease protects ██████ by prohibiting the petitioner from selling the house to anyone else while the lease is in effect.

The county agency initially told the petitioner that the property did not count as an available asset. However, when the county worker asked for advice from the Help Desk, she was told that the property was available because ██████ had not exercised his right to purchase it. That response cited no policy or law, and I give it no deference. The petitioner made a good-faith attempt to sell the house in a manner that had the blessing of the county agency. Because she made this good-faith attempt to sell the house, the sale of the house to anyone other than ██████ is now barred by a legal impediment until June 1, 2015. I find that the house is not a countable asset until then unless ██████ defaults on the lease. Because the parties agree that without the house her assets are less than \$15,000, she is eligible for the Medicaid Purchase Plan. I cannot tell from the notices if her eligibility began on July 1, 2014, or earlier, so I will order the agency to reinstate her retroactive to whatever date it ended her benefits.

CONCLUSIONS OF LAW

1. The petitioner's house is not a countable asset because there is a legal impediment to selling it. That impediment will remain in effect until June 1, 2015, unless the person to whom it is being leased defaults on the lease.
2. The petitioner is eligible for the Medicaid Purchase Plan because her assets do not exceed \$15,000.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it reinstate the petitioner into the program retroactive to the date that her benefits ended.

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 17th day of July, 2014

\sMichael D. O'Brien
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 17, 2014.

St. Croix County Department of Human Services
Division of Health Care Access and Accountability