



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/158618

PRELIMINARY RECITALS

Pursuant to a petition filed June 25, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on August 19, 2014, at Madison, Wisconsin. The hearing record was held open for 10 days for a submission by the petitioner, which was received.

The issue for determination is whether the petitioner was “asset-ineligible” for Institutional/Long-Term Care MA for July 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
By: [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Eric Deml, ES Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of nursing home in Dane County.

2. The petitioner was initially certified for Institutional/Long-Term Care MA effective June 1, 2013. Such MA cases must undergo an annual review.
3. A review was belatedly performed (agency did not promptly send the review packet to the petitioner) on July 1, 2014. During that review, the agency worker advised that (1) a review signature page and (2) verification of the transfer of assets above \$2,000 to the community spouse, would be needed by July 14, 2014. That deadline was later extended by the agency to July 22, 2014. Verification of transfer of a AAA life insurance policy was not received by that deadline.
4. The assets owned by the petitioner that exceeded \$2,000 from July 2013 through June 2014 were two bank accounts and a AAA life insurance policy with cash value.
5. On June 16, 2014, the Department issued written notice to the petitioner advising that his MA case would be discontinued effective July 1, 2014, because he had not completed his annual review. On July 23, 2014, the Department issued written notice to the petitioner advising that his MA case remained closed effective July 1, 2014, because he did not supply the requested verification.
6. The petitioner filed a new MA application on July 28, 2014, seeking MA backdated to July 1, 2014. It is undisputed that the petitioner had closed or transferred his two checking accounts to his community spouse by the end of July 2014. Verification of the transfer of the AAA policy to the spouse was received by the agency in early August 2014. The verification was a cover letter addressed to the petitioner and dated August 4, 2014, containing a check that cashed out the cash value, so that it could be transmitted to the petitioner's spouse. The cash value was \$25,159.81.
7. On August 15, 2014, the Department issued written notice to the petitioner advising that the petitioner was again eligible for MA effective August 1, 2014, forward. The notice advised that the petitioner was not eligible for MA for July 2014, due to excess assets (the AAA policy cash value).
8. The petitioner signed all needed paperwork to cash in the AAA policy on July 31, 2014, prior to 3:00 pm. The paperwork was collected and processed by his insurance agent, [REDACTED], on that date. [REDACTED] has attested that the transaction was considered final and irreversible by the insurer on July 31, 2014.

DISCUSSION

An applicant for Institutional/Elderly-Blind-Disabled MA has to satisfy nonfinancial and financial tests to be found eligible. The petitioner has passed the nonfinancial tests. The agency has concluded that he did not pass the asset test in July 2014. A single person cannot have nonexempt assets exceeding \$2,000. Wis. Stat. §49.47(4)(b)3g; *Medicaid Eligibility Handbook (MEH)*, § 39.4.1, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. A married couple with a spouse in the community may have higher assets, but the assets in the institutionalized person's name that exceed \$2,000 must be transferred over to the spouse within one year.

The transfer requirement is described in Department policy as follows:

18.4.6 Asset Transfer

After the institutionalized person is found eligible, s/he may transfer assets to the community spouse.

...

18.4.6.1 Asset Transfer Period

The institutionalized spouse must transfer the assets to the community spouse by the next regularly scheduled review (12 months). If his/her assets are above \$2,000 on the date of the next scheduled review, s/he will be determined ineligible. S/he will remain ineligible until his/her assets no longer exceed the \$2000 Medicaid asset limit.

Example 2: [REDACTED] was first institutionalized September 2006. [REDACTED], [REDACTED]'s wife, remained in the community. The couple passed the joint asset test and [REDACTED] was determined eligible in September 2006. The couple's total combined assets were \$42,000, \$32,000 of which were owned solely by [REDACTED]. [REDACTED] had until the next scheduled review (September 2007) to get his total assets under the \$2000 Medicaid asset limit.

By September 2007 [REDACTED] had only transferred \$23,000 to [REDACTED]. [REDACTED] still had \$9,000 in assets. [REDACTED] became ineligible October 2007, and will remain ineligible as long as his assets remain over \$2000.

MEH, § 18.4.6. See also, Wis. Admin. Code § DHS 103.075(5)(d)1-3; Wis. Stat. § 49.455(6). The petitioner did not transfer his assets in time, so the case closure effective July 1, 2014, was correct.

However, the petitioner also had a right to re-apply for coverage, which he did in August 2014. As part of a new application, he could request backdated coverage, which he did. Backdated coverage could be granted if the petitioner's assets were under \$2,000 by the last day of the backdate month. The petitioner argues that his assets were under \$2,000 by July 31, 2014, because he believes that he transferred his life insurance policy cash value to his spouse by that date.

The county agency received verification that the AAA cash-out check was issued to the household on August 4, which appeared to mean that the community spouse could not take ownership of the funds until August 4. That is too late for the petitioner's purpose here. The agency's position, based on the check issuance date, is reasonable *prima facie* evidence of an August transfer.

However, the petitioner's spouse testified that the paperwork to liquidate the cash value occurred on July 31, 2014. Post-hearing, she has supplied an acceptable affidavit from the AAA insurance agent stating the paperwork was completed and collected by him on July 31. He performed the appropriate processing steps on that date, making the cash-out decision irreversible on July 31.

I believe the agent's affidavit. However, I remain bothered by the August 4 cover letter. It is addressed to the petitioner, not his wife. It states that the cash-out check is enclosed. I do not know if the cash-out check was made out to the petitioner, his wife, or to them jointly. If the check was made out to the wife, the transfer is sufficiently complete because the petitioner would have no legal right to cash the check. However, if the check was made out to the petitioner, he could still cash it and retain the proceeds. That would not constitute a completed transfer to the wife before August 1. Looking at the August 4 letter, my best guess is that the check was made out to the petitioner, and that he was therefore not under the \$2,000 asset limit by July 31. The petitioner has the burden of proving, by a preponderance of the credible evidence, that he was under the asset limit. That burden has not been met.

If the August 4 check was made out to the *wife*, the petitioner may wish to file a Request for Rehearing (see below). He should enclose documentation with the rehearing request to show that the insurance company's check was made out to the wife.

CONCLUSIONS OF LAW

1. The Department correctly discontinued the petitioner's Institutional MA effective July 1, 2014, for failure to bring his non-exempt assets under the \$2,000 limit within one year of his initial certification.
2. The Department correctly declined to retroactively certify the petitioner for July 2014, pursuant to his August 2014 Institutional MA application. The denial for July was correct because the petitioner did not reduce his assets to below the \$2,000 limit before August 1, 2014. The petitioner could have retained the insurance cash value check, made out to him and issued on August 4, 2014.

THEREFORE, it is

ORDERED

That the petition 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 22nd day of September, 2014

\sNancy J. Gagnon
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 September 22, 2014.

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