



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

FCP/158674

PRELIMINARY RECITALS

Pursuant to a petition filed June 30, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Fond Du Lac County Department of Social Services in regard to Medical Assistance, a telephone hearing was held on September 03, 2014. Post-hearing the record was held open to allow for submission of additional documentation. A hearing scheduled for August 13, 2014, was rescheduled at petitioner's request.

The issue for determination is whether the petitioner failed to timely provide verification to the respondent.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Petitioner's Representative:

[Redacted representative name]

Respondent:

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

By: Molly Aird

Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Fond Du Lac County.

2. Petitioner was eligible for Medicaid Community Waivers and Family Care under spousal impoverishment policies until June 30, 2014, at which time petitioner's failure to supply proof of his spouse's self-employment income led to termination of his eligibility. Petitioner's eligibility was continued during pendency of this appeal. See, Exhibits R-I and R-L.
3. Proof of said self-employment was requested on May 21, 2014, with a due date of June 2, 2014. Exhibit R-2
4. On June 3, 2014, the respondent notified petitioner that his eligibility for Medicaid Community Waivers and Family Care would terminate effective July 1, 2014. Exhibit R-C.
5. Petitioner did not provide self-employment verification by the due date since petitioner's spouse had not yet prepared her 2013 taxes. This explanation was shared with the respondent in a phone call June 20, 2014. Exhibit R-A.
6. The respondent subsequently sent self-employment report forms to the respondent to use in lieu of the 2013 taxes, and the petitioner's case was re-pended for new verification now due by July 14, 2014. Exhibit R-G
7. The respondent provided the requested self-employment verification information to the respondent on August 13, 2014. Exhibit R-J.
8. The petitioner is presently eligible for Medicaid Community Waivers and Family Care.

DISCUSSION

Medical assistance rules require applicants to verify various information, including assets. Wis. Admin. Code, § DHS 102.03(3)(h). Agencies may deny applications if an applicant "is able to produce required verifications but refuses or fails to do so" within 10 days of the date they are requested..." Medicaid Eligibility Handbook, § 20.7.1.1. see also Wis. Admin. Code § DHS 102.03(1). Section DHS 102.02 states: "If a person refuses to provide information necessary for the determination of eligibility, all persons whose eligibility depends upon the withheld information shall be denied eligibility."

Petitioner's wife/community spouse is the owner of the [REDACTED], and [REDACTED]. The respondent asserts that any income generated from these companies would be considered self-employment income for his spouse, and that that income must be verified to determine whether spousal income allocation can be allowed when determining petitioner's Medicaid Community Waivers potential cost share amount.

At hearing, the petitioner argued that he was unable to provide the requested verifications, since taxes and a final accounting of petitioner's self-employment income was not finalized in time to comply with the deadlines. The petitioner argued that the respondent was aware of this, and the respondent acknowledged that. The respondent did not object to petitioner's testimony that the late submission of the verification as due to circumstances beyond petitioner's control. Nor was there any disagreement regarding petitioner's assertion that the three business entities are largely defunct. Testimony explained that the business either earn very little money or are losing money.

As a threshold matter, agencies are allowed to deny applications if the applicant is *able* to produce verifications and does not. Key here is the ability to produce the verification. The petitioner asserts that he was unable to do so prior to the verification due date. The respondent has not disputed this and the record does not establish anything to the contrary; as such, I will find that the petitioner was unable to produce the required verification. I note that the respondent confirmed that, after receipt of the verification information, the petitioner was again found to be eligible for enrollment.

CONCLUSIONS OF LAW

1. The petitioner was not able to provide requested self-employment verifications prior to the verification due date.
2. The ability to provide verification is a pre-requisite to denial pursuant to Medicaid Eligibility Handbook, § 20.7.1.1; see also Wis. Admin. Code § DHS 102.03(1).

THEREFORE, it is**ORDERED**

That this matter be remanded to the respondent to determine that petitioner is eligible for Medicaid Community Waivers and Family Care effective July 1, 2014, forward. All actions required by this Order shall be completed within 10 days following issuance of this Decision.

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 10th day of November, 2014.

\sPeter McCombs
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 November 10, 2014.

Fond Du Lac County Department of Social Services
Office of Family Care Expansion
Attorney [REDACTED]