



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[Redacted case name]

DECISION

MGE/160348

PRELIMINARY RECITALS

Pursuant to a petition filed September 3, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Green County Department of Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on October 21, 2014.

The issue for determination is whether petitioner's [Redacted] contract is an available asset.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted] (not present at October 21, 2014 Hearing)
[Redacted]
[Redacted]
[Redacted]

Petitioner's Representative:

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
BY: Kristi Baker, ESS
Green County Department of Human Services
N3152 State Road 81
Monroe, WI 53566

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 86 years old) is a resident of Green County, Wisconsin.
2. On July 28, 2014 petitioner purchased an [REDACTED] contract ["Contract"] for the sum of \$310,000; petitioner received the Contract on July 28, 2014.
3. The Contract is irrevocable but could be canceled at any time before midnight of the 20th day from the date of its receipt; in this case that would be 20 days from July 28, 2014 which is August 17, 2014; cancellation voids the Contract as if it had not been issued.
4. The Effective date of the Contract was August 25, 2014.
5. Starting September 25, 2014 the Contract paid \$6,537.54 per month to petitioner.
6. On August 15, 2014 petitioner applied with the County for MA.

DISCUSSION

An asset is available when:

1. It can be sold, transferred, or disposed of by the owner or the owner's representative, and
2. The owner has a legal right to the money obtained from sale of the asset, and
3. The owner has the legal ability to make the money available for support and maintenance, and
4. The asset can be made available in less than 30 days.

Medicaid Eligibility Handbook ["MEH"] Chapter 16.2.1.

In this case petitioner could cancel the Contract at any time on or before August 17, 2014. Petitioner does not claim that, if she cancelled the Contract within the allowed 20 days, that the money used to purchase the Contract could be made available in less than 30 days. Thus, all 4 parts of the above availability test are satisfied. This means that the money used to purchase the Contract was an available asset until the end of the day on August 17, 2014.

Petitioner argues that the money used to purchase the Contract is not an available asset. Petitioner points to the following contractual language: "Incontestable: This contract will be incontestable from its Effective Date." However, the Effective Date of the Contract is August 25, 2014. Petitioner also points to the following contractual language: "Irrevocable: This contract is irrevocable. It may not be transferred, assigned, surrendered, or commuted during Your lifetime. This contract has no cash or surrender value." However, the 20 day cancellation provision, discussed above, is itself a part of the Contract. Therefore, although the Contract may be otherwise irrevocable, it can nevertheless be cancelled pursuant to the terms of the 20 day cancellation contract provision. In this regard it is noted that the "Irrevocable" clause of the Contract does not list cancellation as not being allowed.

Finally, the County argues that the Contract was an available asset until September 25, 2014 and points to the Annuity *Sale Disclosure* which states: "It is understood that once payments have begun, no cash surrender of the policy is possible." Payments begin September 25, 2014. However, that language does not preclude the Contract being an unavailable asset prior to September 25, 2014. As noted above, the contractual provisions make the Contract irrevocable and an unavailable asset as of August 18, 2014.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner's [REDACTED] contract was not an available asset as of August 18, 2014 but was an available asset before that date.

THEREFORE, it is

ORDERED

That this matter be REMANDED to the County and that, within 10 days of the date of this *Decision*, the County reprocess petitioner's August 2014 MA application and issue a new written decision (with appeal rights) taking into that petitioner's [REDACTED] contract was not an available asset as of August 18, 2014 but was an available asset before that date.

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 Ave [REDACTED], 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 5th day of November, 2014

\sSean P. Maloney
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 5, 2014.

Green County Department of Human Services
Division of Health Care Access and Accountability
Attorney [REDACTED]