



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact
[Redacted]

DECISION

MGE/160814

PRELIMINARY RECITALS

Pursuant to a petition filed September 22, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dunn County Department of Human Services in regard to Medical Assistance, a hearing was held on October 22, 2014, at Menomonie, Wisconsin. The record was left open for 30 days at the petitioner's request.

The issue for determination is whether an earlier decision finding the petitioner eligible for medical assistance is binding upon the county agency.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact
[Redacted]

Petitioner's Representative:

[Redacted]
Redact
[Redacted]

Respondent:

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

By: Paula Goodell

Dunn County Department of Human Services
808 Main Street
PO Box 470
Menomonie, WI 54751

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Dunn County.

2. On October 21, 2013, the Division of Hearings and Appeals ordered the Polk County agency to find the petitioner eligible for medical assistance retroactive to November 1, 2011. *DHA Decision No. MGE/138269*.
3. The county agency requested a rehearing on November 4, 2013. The Division of Hearings and Appeals denied that request on November 18, 2013.
4. The county agency has never enforced the Division of Hearings and Appeals' order.
5. The petitioner reapplied for medical assistance on July 21, 2014. The Dunn County agency found her ineligible for institutional medical assistance from November 4, 2011, through November 5, 2015, because of a divestment.

### **DISCUSSION**

This matter has been around a long time. The petitioner initially applied for institutional medical assistance late in 2011. The Division of Hearings and Appeals issued a proposed decision denying those benefits on July 6, 2012; the Department adopted that decision as a final decision on August 14, 2012. On August 20, 2013, Polk County Circuit County Judge Molly Gale Wyrick remanded the matter with observations but without any specific instructions. The Division reheard the matter and on October 21, 2013, issued a new decision, this time in the petitioner's favor. It remanded the matter to Polk County with instructions to find her eligible for institutional medical assistance retroactive to November 1, 2011. The agency requested a rehearing on November 4, 2013, but the Division of Hearings and Appeals denied that request on November 18, 2013. The agency never appealed that decision. Nevertheless, it refused to enforce it. The petitioner reapplied for benefits in Dunn County on July 21, 2014. That agency denied the application. The denial date is unclear because it did not provide its notice of decision, but the basis of the denial is not. It contends that an additional divestment the various that Polk County had not considered left her ineligible from November 4, 2011, through November 5, 2015.

Decisions by the Division of Hearings and Appeals may not be infallible, but they are binding. The Division previously ordered the agency to find the petitioner eligible as of November 1, 2011. It had no authority to ignore this order, especially after the appeal process, which is outlined at the end of every decision issued by the Division, passed. The petitioner disclosed the basis of the new divestment, assets given to the petitioner's children, during the original application process, and thus that divestment is covered by the decision pertaining to that application. It appears that Polk County made an error by not raising that particular divestment in either of the first two hearings, but that does not give Dunn County the right to do so now. (Whether the petitioner or her attorney had any ethical obligation to bring this up is not before me.) I will reiterate my order to find the petitioner eligible retroactive to November 1, 2011. If the agency fails to follow through on this, I suggest that she go back to circuit court to obtain a writ of mandamus rather than continue with the administrative appeal process.

### **CONCLUSIONS OF LAW**

The decision in this matter is bound by the decision previously issued in *DHA Decision No. MGE 160814*.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions with instructions that within 10 days of the date of this decision it take all steps necessary to ensure that the petitioner is eligible for institutional medical assistance retroactive to November 1, 2011.

**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 9th day of December, 2014

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\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 December 9, 2014.

Dunn County Department of Human Services  
Division of Health Care Access and Accountability  
Attorney Redact