



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

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MQB/161313

**PRELIMINARY RECITALS**

Pursuant to a petition filed October 16, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Marquette County Department of Human Services in regard to Medical Assistance, a hearing was held on November 24, 2014, at Montello, Wisconsin.

The issue for determination is whether the agency erred by discontinuing premium assistance for petitioner due to being over the asset limit for such benefit.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

Respondent:

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

By: Cheryl Selbach

Marquette County Department of Human Services  
480 Underwood Avenue  
PO Box 99  
Montello, WI 53949-0099

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Marquette County.
2. Petitioner and her husband own a property and dwelling in Fond du Lac which they do not live in.

3. The home has fair market value exceeding \$50,000.
4. The property is not listed for sale.
5. Petitioner and her husband rent the property to a relative for \$100 per month. They have charged that rent for approximately three years.
6. 2013 property taxes were \$1,821.
7. Petitioner seeks QMB premium assistance.
8. The agency determined the property to be an asset placing petitioner over the asset limit.
9. Petitioner appealed.

### **DISCUSSION**

Medicare is the health insurance program administered by the federal Centers for Medicare & Medicaid Services (CMS) for people over 65 and for certain younger disabled people. Medicare is divided into two types of health coverage. Hospitalization Insurance ( Part A ) pays hospital bills and certain skilled nursing facility expenses. Medical Insurance ( Part B ) pays doctors' bills and certain other charges.

Medicare charges premiums for its insurance. Wisconsin MA pays some or all Medicare premiums for the persons participating in the programs described below:

1. Qualified Medicare Beneficiary ( QMB ).
2. Specified Low-Income Medicare Beneficiary ( SLMB ).
3. Specified Low-Income Medicare Beneficiary Plus ( SLMB+ ), also known as Qualifying Individuals – 1 ( QI-1 ).
4. Qualified Disabled and Working Individuals ( QDWI ).

*MA Eligibility Handbook (MEH)*, 32.1.1 (viewable online at [www.emhandbooks.wi.gov/meh-ebd/](http://www.emhandbooks.wi.gov/meh-ebd/)). See also, Wis. Stat. §49.468.

The income limit is set below 100% of the federal poverty level for QMB, 100% to 119% for SLMB, 120% to 134% for SLMB+, and up to 200% for QDWI. *MEH*, 32.2.3 & 39.5. A person who is eligible and certified for QMB will have his/her Medicare Part A and B premiums paid by the Wisconsin Medical Assistance program. A SLMB or SLMB+ recipient will have only his Medicare Part B premiums paid by Wisconsin MA. A QDWI recipient will have only his/her Medicare Part A premiums paid by the state MA program.

The Wisconsin Medical Assistance programs have asset limits in addition to income limits. The asset limit for QMB, SLMB, and SLMB+ is \$10,750 for a household size of two. *MEH*, 32.6.

The agency argues that petitioner is over the asset limit due to the ownership of real property that is rented to a relative. Petitioner argues that the property is exempt from consideration as it is a “business asset.” See *MEH* 16.9(2) (“Property used in a trade or *business* is in this category”). Thus, it is critical that the property is used in a “business.” For the purposes of Medicaid, “business” is defined:

15.6.1.2 Business

Business means an occupation, work, or trade in which a person is engaged as a means of livelihood.

It is not disputed that the equity in the home, which does not have an associated mortgage, is well over the asset limit. Testimony at hearing indicated a fair market value of over \$50,000. It is undisputed that petitioner and her husband rent the home out to a relative for a \$100 monthly rent. While petitioner argued that this rental is due to the relative falling on hard times, it is notable that the petitioner conceded that the rent has remained stable at the \$100 per month rate for approximately three years despite a fair-market rent today in the range of 700-800 dollars per month. This \$100 amount is sufficient, petitioner explained, to cover the property taxes. The property taxes in 2013 exceeded \$1,800. Yet, petitioner then argued that this property should be designated a business and not a non-homestead property.

Petitioner's argument is absurd. In this case, the rental of this home is simply not a business, nor is it used as part of a business. It is not part of an occupation or trade. The rent does not provide any livelihood for petitioner. The property is a business only in an illusory sense that could be the incarnation of an optimistically creative attorney. This is nothing more than a second home owned by petitioner. This is quite clearly nothing more than charity to the relative for whatever reason petitioner reasons. It remains perplexing why petitioner believes the state's taxpayers should pay for her insurance premium rather than charge her relative a still-bargain-basement-level rent and pay it herself. Petitioner could also sell the property and the economy of Fond du Lac will likely not suffer.

**CONCLUSIONS OF LAW**

The property is not a business asset but is a countable non-homestead real property exceeding the asset limit.

**THEREFORE, it is**

**ORDERED**

That this appeal 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 26th day of November, 2014

---

\sJohn P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 26, 2014.

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