



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/161537

PRELIMINARY RECITALS

Pursuant to a petition filed October 25, 2014, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a telephonic hearing was held on December 16, 2014. The record was held open post-hearing to allow this administrative law judge to contact the responsible agency in this matter to determine if and when an application and/or denial was made for petitioner's SSI-E. Such contact was made and the agency supplied a response on December 17, 2014. This administrative law judge then contacted the petitioner on December 17, 2014 to advise him of the agency's position.

The issue for determination is whether the agency met its burden to show that it correctly denied petitioner SSI-E.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Melissa Sherry, State SSI Analyst and Theresa Smith (post-hearing),
Milwaukee County Dept on Aging
Milwaukee Enrollment Services
1220 W Vliet St, Suite 300
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County and receives Supplemental Security Income (SSI).
2. On October 15, 2014 the Milwaukee County Department on Aging (the agency) obtained information to complete a Long Term Care Functional Screen (LTCFS) for the petitioner.
3. On October 17, 2014 the agency entered the petitioner's information into the LTCFS and obtained a level of care.
4. On October 20, 2014 the agency informed petitioner by phone that he did not meet the 40 monthly hour requirement. No written notice was provided to petitioner.

DISCUSSION

The purpose of the SSI-E supplement is to provide additional funds to certain SSI recipients who have exceptional expenses, as evidenced by either their living in substitute care with monthly expenses to the person which are greater than or equal to the SSI-E payment level, or by their living at home and needing at least 40 hours per month of primary long-term support services. See *Supplemental Security Income Exceptional Expense (SSI-E) Handbook*, §1.1.1, available online at <http://www.emhandbooks.wisconsin.gov/ssi-e/ssi-e.htm>.

The problems with this case are that 1) there is no information in the record to show what information the agency had entered for the LTCFS for the petitioner to know how to respond for hearing, and 2) that the petitioner was never advised in writing that his SSI-E was denied. Petitioner was also confused because he believed he had been given more than one assessment- one in October and one in November 2014.

It is true that in determining whether someone is eligible for SSI-E, the agency must determine if a person needs at least 40 hours per month of primary long-term support services (supportive home care, daily living skills training or community support program services). See *SSI-E Handbook*, §3.1.1. This is determined by completing a functional assessment (which meets the requirements of Wis. Stat. §46.27) and completing the F-20817 Assessment Worksheet for Natural Residential Settings, which confirms the number of hours of qualifying long-term support services needed. *Id.* The SSI-E Natural Residential Setting Application Checklist (F-20812) may be completed to confirm that the person is in a qualified living arrangement and meets the other qualifying conditions. See *SSI-E Handbook*, §3.1.7.

The SSI-E Handbook also specifically states that if ‘the local agency determines the person is not eligible for SSI-E, it must provide a written notice of denial to the person or guardian and the representative payee, if any, with the reasons for ineligibility and a statement of appeal rights.’ See *SSI-E Handbook*, §§3.1.5 and 3.1.11.

As there is no dispute that petitioner made an application for SSI-E, the agency has the burden to show why it denied it. It is true that the hearing was scheduled without noticing the correct agency of the hearing, and therefore no representative for the denying agency appeared. The agency that was noticed of the hearing did appear, but was only able to confirm that petitioner was eligible for SSI. The petitioner was unable to provide much detail either. The petitioner agreed to hold the record open for this administrative law judge to contact the denying agency to determine if there was an action to consider in this matter. The result was that the agency stated it acted pursuant to Findings of Fact #2-4. The information leads me to conclude that the agency has not met its burden to show that the denial was correct as no information was provided to show an assessment was performed correctly and no written notice was provided to petitioner. Accordingly, I will remand the matter so that the application can be reprocessed correctly.

CONCLUSIONS OF LAW

The agency has not met its burden to show that it correctly denied petitioner SSI-E.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions that within 10 days of the date of this decision it re-process the petitioner's application for SSI-E, and complete its determination of his eligibility for same within 30 days of the date of this Decision, which includes issuing a written decision of that determination to the petitioner.

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 Milwaukee,
Wisconsin, this 22nd day of December, 2014

\s\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on December 22, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability
melissa.sherry@wisconsin.gov



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 5, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability
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