



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
Re Redact [Redacted]
[Redacted]
[Redacted]

DECISION

MGE/161072

PRELIMINARY RECITALS

Pursuant to a petition filed October 02, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on November 25, 2014, at Appleton, Wisconsin. At the request of petitioner's representative, a hearing set for November 4, 2014 was rescheduled.

The issue for determination is whether the county agency correctly refused to backdate the petitioner's Nursing Home MA prior to September 1, 2014, due to available assets above the \$2,000 MA asset eligibility limit.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Re Redact [Redacted]
[Redacted]
[Redacted]

Representative:

[Redacted]
Redact [Redacted]
Redact [Redacted]
[Redacted]

Respondent:

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

By: [Redacted], ESS
Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # Redact) is a 62 year old disabled man who has been a resident of a nursing home in Outagamie County since about June, 2014.
2. On August 11, 2014, petitioner's representative applied on behalf of petitioner for Institutional Medical Assistance (MA) requesting backdating to June 1, 2014.
3. The petitioner receives monthly Social Security of about \$1,033, and monthly Veterans Administration payment of about \$21.
4. The county agency determined that petitioner had a Thrivent Financial life insurance policy (contract #1057956) with a death benefit of \$2,977.20, and with a net cash value of \$1,543.97 which must be counted as an asset for MA eligibility purposes per MA Handbook, 16.7.5.
5. The petitioner had assets of land (\$1,550, Savings (\$5), and checking account (\$333.54) at time of August 11, 2014 MA application period. See Exhibit 4.
6. The petitioner's representative is only appealing whether petitioner was asset eligible for MA for the months of July and August, 2014.
7. The county agency sent a September 18, 2014 Notice of Decision to the petitioner stating that his August 11, 2014 MA application was denied for the months of July and August, 2014, due to assets above the \$2,000 MA asset eligibility limits. See Exhibits 2 and 1.
8. On September 15, 2014, the county agency received written confirmation from Thrivent Financial (in its September 11, 2014 letter), that petitioner's net cash value of \$1,543.97 had been paid out to the petitioner's nursing home. See Exhibit 3. That payment lowered the petitioner's assets below the \$2,000 asset limit.
9. The county agency approved the petitioner's MA application as of September 1, 2014, due to available assets below the asset limit.
10. The petitioner was unable to establish that his assets were below the \$2,000 MA asset limit prior to September 17, 2014.

DISCUSSION

MA certification is available if **all** conditions of eligibility-- including meeting the asset test are providing necessary, requested verification, are satisfied. Wis Admin. Code § DHS 103.08(1). Certification pursuant to an application can be made retroactive for up to three months. For a single person seeking Institutional MA coverage, **the asset limit is \$2,000**. Wis. Stat. §49.47(4)(b). See also *Medicaid (MA) Eligibility Handbook (MEH)*, Table 39.4 (EBD), viewable online at <http://www.emhandbooks.wi.gov/meh-ebd/>.

The *MA Eligibility Handbook (MEH)* provides the following in pertinent part: “. . . Count the cash value of all life insurance policies. For persons age 65 or over, blind or disabled, count it only when the total face value  of all policies, including riders and attachments, owned by each person exceeds \$1,500. Do this calculation for each EBD person. In determining the face value, do not include any life insurance which has no cash value . . .” In the instant case, the petitioner's life insurance net cash value exceeded \$1,500.

During the November 25, 2014 hearing, county representative, ESS Redact, presented a well organized case with reliable evidence that petitioner's assets were above the \$2,000 MA asset limit until September 17, 2014. See above Findings of Fact. During the hearing, petitioner's daughter and POA was unable to contest the facts and exhibits as presented by the county agency. However, Ms. Redact asserted two equitable arguments for why petitioner should allegedly be found MA eligible prior to September 1, 2014. First, she argued that if the county agency had immediately informed her of the asset

limit and the provisions regarding counting the cash value of life insurance, she might have taken action during August to payout the \$1,543.97 cash value to the nursing home. Second, Ms. **Redact** argued that it took until September 2014 (actually only about 3 weeks) for the agency to begin reviewing the petitioner's August 11, 2014 MA application which delayed her decision as POA to pay out the cash value of petitioner's life insurance. Third, Ms. **Redact** argued it would be a financial hardship to pay for petitioner's July and August, 2014 nursing home bills. However, the petitioner's representative failed to meet the burden of proof to establish that petitioner's available assets were under the \$2,000 asset limit until September 17, 2014. As stated above, Wis. Stat., §49.47(4) (b)3m provides that if available assets are above the asset limit, the person is not eligible for MA.

The statute does not allow for outstanding debts to be deducted from assets, nor does it provide any exceptions for unusual situations. An asset is considered available if it can be sold or disposed of by the owner or the owner's representative, the owner has legal title to it, and the owner has the legal ability to make the money from the asset available for support and maintenance. Medicaid Eligibility Handbook, 16.2, "Asset Availability." The MA Handbook provides that a county agency **certify a person for MA with a begin date of the first day of the month in which s/he met all eligibility conditions.** In this case, the first day of the month in which petitioner met all eligibility conditions was September 1, 2014.

It is the long-standing policy of the Division of Hearings & Appeals (DHA) that the Department's Administrative Law Judges (ALJs) **do not possess equitable powers.** See Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp 540, 545 (E.D. Wis. 1977). I can find no legal authority, which would allow me to make an exception whereby petitioner would be eligible for Institutional MA prior to September 1, 2014, the first of the month in which petitioner was asset eligible for MA benefits. Accordingly, based upon the above, I must conclude that the county agency correctly refused to backdate the petitioner's Nursing Home Medical Assistance (MA) prior to September 1, 2014, due to available assets exceeding the MA asset eligibility limits.

CONCLUSIONS OF LAW

The county agency correctly refused to backdate the petitioner's Nursing Home Medical Assistance (MA) prior to September 1, 2014, due to available assets exceeding the MA asset eligibility limits.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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 12th day of January, 2015

\sGary M. Wolkstein
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 January 12, 2015.

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