



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
Redact

DECISION

MGE/161239

PRELIMINARY RECITALS

Pursuant to a petition filed October 15, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Jefferson County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on December 9, 2014, at Jefferson, Wisconsin. The hearing record was held open for a submission from the petitioner, which was received.

The issue for determination is whether the Department correctly denied the petitioner's July 2014, Institutional/Long-term care MA application.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Redact

Respondent:

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

By: [Redacted], ESS
Jefferson County Department of Human Services
Workforce Development Center
874 Collins Rd.
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Jefferson County.

2. The petitioner entered a nursing home in mid-June 2014, and remains there at this time. She does not intend to return to her residence in the community.
3. On July 30, 2014, an Institutional MA application was filed on the petitioner's behalf, seeking backdated eligibility. During a meeting between her representative and a county agency worker on July 30, a verbal request was made to the representative for verification of the petitioner's assets and of any reverse mortgage on her former residence.
4. The petitioner's former residence had a fair market value of \$122,800. Verification of a reverse mortgage on that property was not received within the standard 30-day application processing period. On September 2, 2014, the Department issued written notice of denial of the application to the petitioner. The basis for denial was excess assets – her \$122,800 real property and a life insurance policy with a \$2,569 cash value (\$10,000 face value).
5. The petitioner previously took out a reverse mortgage on her residence with [Redacted]. As of September 2014, the mortgage balance was \$130,124.50.
6. The petitioner's representative began requesting the amount and verification of the petitioner's reverse mortgage from the mortgage company on May 1, 2014. *See*, Exhibit 2. He sent another fax with the same request to the company in August, after his meeting with the county worker. They belatedly sent the representative a form to sign and submit; he did so in August. On September 3, the company acknowledged receipt of the form, and said he would get a response in 30 days. A statement from the company was received by the representative on or slightly after October 1, 2014. The statement confirms that the amount of the reverse mortgage exceeds the fair market value of the residence at [Redacted], Madison, Wisconsin.
7. The representative placed a telephone call to the agency worker on approximately August 28 or 29, advising of difficulty in getting information from the mortgage company.
8. The petitioner's other problematic asset was a [Redacted] life insurance policy with a face value of \$10,000. A life policy with a face value exceeding \$1,500 must be evaluated for a cash value. The cash value was \$2,430.22 at the time of the July 2014 application. The petitioner requested a cashing out of that amount well ahead of August 30, 2014, but the check was not received from the company until mid-October 2014.
9. The petitioner filed a second MA application in October 2014, and found to be eligible. Her MA certification was backdated to July 1, 2014.

### DISCUSSION

A single applicant for Institutional/Elderly-Blind-Disabled MA has to satisfy nonfinancial and financial tests to be found eligible. The petitioner has passed the nonfinancial tests. The agency has concluded that she has not passed the asset test, which is that a single person cannot have nonexempt assets exceeding \$2,000. Wis. Stat. §49.47(4)(b)3g; *Medicaid Eligibility Handbook (MEH)*, § 39.4.1, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

The petitioner's former residence could have been an exempt asset (*i.e.*, does not count against the \$2,000 limit) if the petitioner had an intent to return to it. The parties agree that she did not have such an intent. The property then becomes an asset that counts against the limit. *MEH*, § 16.8.1.3. In evaluating an asset's value, an encumbrance against the asset is subtracted. When the encumbrance (mortgage is subtracted from the [Redacted] property's fair market value, the result is zero. Thus, the real property is not a barrier to the petitioner's Institutional MA eligibility prior to July 2014.

The petitioner also had a life insurance policy with a cash value exceeding the \$2,000 asset limit. The policy instruction directs the agency to include cash value (where face value exceeds \$1,500) in the counted asset total:

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.

*MEH*, § 16.7.5. The petitioner's representative asked the life insurance company to issue the cash value well ahead of August 2014. The company responded by sending a form in October that had to be signed by the petitioner. The petitioner signed the form in October, and the cash value check was issued in that month. The cash value check was deposited into the petitioner's checking account by October 31, 2014, and is no longer a barrier to eligibility. Assets that are not available to the petitioner (due to foot dragging by a life insurance company), are not available until actually received. An unavailable asset does not count against the asset limit. *MEH*, § 16.2.1.

### CONCLUSIONS OF LAW

1. Due to the presence of a reverse mortgage, the petitioner's equity value in her Redact real property was zero at the time of her July 2014 MA application, and during the backdate period.
2. Due to delay in response from her life insurance company, the petitioner's life insurance cash value was an unavailable asset and not an impediment to eligibility for her July 2014 MA application.

**THEREFORE, it is**

**ORDERED**

That the petition is remanded to the county agency with instructions to redetermine the petitioner's Institutional MA eligibility, based on her July 2014 application, and in accord with the Conclusions of Law above. This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition 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 14th day of January, 2015

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\sNancy J. Gagnon  
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 14, 2015.

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