



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
[Redacted]
[Redacted]

DECISION

MGE/161964

PRELIMINARY RECITALS

Pursuant to a petition filed November 12, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a hearing was held on January 8, 2015, by telephone. A hearing set for December 10, 2015, was rescheduled at the petitioner’s request.

The issue for determination is whether the petitioner was “asset-ineligible” for Institutional/Long-Term Care MA for August 2014.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: [Redacted], ES Spec.
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The petitioner applied for Long-Term Care/Institutional MA, a subset of Elderly/Blind/Disabled MA, on October 1, 2014. He sought the maximum three-month backdating of his eligibility. The petitioner was advised that he would have to verify assets and he did so.
3. On November 5, 2014, the agency issued written notice to the petitioner advising that his application had been denied for July and August 2014. The basis for denial was that his assets exceeded the \$2,000 asset limit. MA was approved for September 1, 2014, onward. As of the date of hearing, the petitioner no longer contested denial of backdated coverage for July 2014.
4. The petitioner's assets went under \$2,000 for the first time in October 2014. As of August 31, 2014, the petitioner's assets totaled \$11,123.05. On September 1, 2014, the petitioner's representative issued a check for \$10,241.86 from the petitioner's checking account to pay his most recent residential facility bill. The assets then went under \$2,000. The petitioner had incurred liabilities totaling \$10,278.86 as of August 31, 2014.

DISCUSSION

An 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 he did not pass the asset test in July and August 2014. 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>.

There is no disagreement that the petitioner's liquid assets (checking accounts, facility trust account) totaled more than \$2,000 throughout July and August 2014. That exceeds the limit. The petitioner concedes that gross assets did not drop below \$2,000 until September 1, 2014, when his representative wrote out a check to his care facility. The agency's denial of the July/August portion of the application will therefore be upheld.

Although the petitioner was incurring nursing home bills in August, the MA statute does not allow me to consider the petitioner's "net equity" (assets versus unpaid bills). Rather the statute is a simple declaration that a person cannot have assets over the limit:

(4) ELIGIBILITY.

(a) ...

(b) Eligibility exists if the applicant's property, subject to the exclusion of any amounts under the ... federal Social Security Act, does not exceed the following:

1. Subject to par. (bc), a home and the land used and operated in connection therewith or in lieu thereof a manufactured home or mobile home if the home ...is used as the person's or his or her family's place of abode.

2. Household and personal possessions.

2m. One or more motor vehicles as specified in this subdivision.

...

3. For a person who is eligible under par. (a) 3. or 4., funds set aside to meet the burial ...

3g. Liquid assets for a single person limited to:

a. In 1985, \$1,600.

b. In 1986, \$1,700.

c. In 1987, \$1,800.

d. In 1988, \$1,900.

e. After December 31, 1988, \$2,000.

Wis. Stat. § 49.47(4)(b)3g [*emphasis added*]. This Division has issued decisions for over 25 years that always declare that asset “net equity” cannot be considered. Therefore, I cannot consider net equity here.

The petitioner’s representative testified in straightforward fashion that there was no intent in this case to protect a portion of the petitioner’s assets for a future estate; rather, the representative simply did not realize that the MA program would not allow consideration of a net equity position. I believe the earnest representative’s testimony as to his intent, but that does not allow me to deviate from the statutory requirement.

CONCLUSIONS OF LAW

1. The county agency correctly denied that portion of the petitioner’s October 2014, MA application seeking coverage during July and August 2014. The denial was correctly based on a determination that excess assets were present in those two months.

THEREFORE, it is ORDERED

That 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 12th day of January, 2015

\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 12, 2015.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability