



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]

DECISION

MGE/162463

PRELIMINARY RECITALS

Pursuant to a petition filed December 05, 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, a hearing was held on January 20, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the agency used the correct asset assessment date to determine the Petitioner's eligibility for Family Care.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]

Petitioner's Representative:

[Redacted]

Respondent:

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

By: Julie Miller

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [Redacted]) is a resident of Waukesha County. He resides in an assisted living facility.

2. The Petitioner was hospitalized from February 27, 2014 – March 1, 2014 and from March 29, 2014 – April 4, 2014.
3. On March 25, 2014, a Long Term Care Functional Screen (LTCFS) was completed for the Petitioner. The Petitioner's wife and an ADRC Specialist discussed and signed a Care Coordination Plan. It indicates that the ADRC Specialist discussed Options Counseling and Medicaid/T-19 with the Petitioner's wife and that the LTCFS was completed. The notes of the screener state: "While [Petitioner] and [Petitioner's wife] could greatly benefit from [Petitioner] receiving support of Family Care, [Petitioner's wife] is simply not sure about applying for T-19. Advised her to seek legal counsel re: spousal impoverishment and to contact our dept in the future should she decide to seek this support." The screener found that the Petitioner met the Level of Care requirements for Family Care eligibility on March 25, 2014.
4. Between March 25, 2014 and August 19, 2014, neither the Petitioner nor the ADRC contacted the income maintenance agency about financial eligibility or to request Family Care or Medicaid enrollment for the Petitioner.
5. On August 1, 2014, a Medicaid application was submitted to the agency on Petitioner's behalf.
6. On August 19, 2014, a Family Care application was submitted on Petitioner's behalf. The requested date of enrollment was August 1, 2014. A LTCFS was submitted on August 26, 2014 with a screening date of August 26, 2014. The LTCFS reported Petitioner was functionally eligible for Family Care. The March 25, 2014 LTCFS was not submitted with the application to the income maintenance agency.
7. On August 26, 2014, a Notice of Proof Needed was issued to the Petitioner's wife with a due date of September 19, 2014 for the proof. Numerous items were requested for the agency to verify the Petitioner's financial eligibility.
8. On September 19, 2014, a Notice of Decision was issued to the Petitioner's wife informing her that the Petitioner's Medicaid application was denied effective August 1, 2014 due to assets over the program limit. It also informed her that the Family Care application was denied effective September 1, 2014 due to failure to provide requested proof and assets over the program limit.
9. On October 9, 2014, the agency received all verifications that had been requested. The agency completed and issued a Community Spouse Asset Share Notice indicating that combined countable assets of Petitioner and his wife were \$96,809.12 as of August 1, 2014.
10. On October 10, 2014, numerous notices with Information about Community Spouse Asset Share Calculation were issued to Petitioner's representatives. A number of these notices were inaccurate.
11. On October 23, 2014, a second MA application was submitted. The LTCFS dated March 25, 2014 was submitted with this application. The LCTFS from March 25, 2014 expired on September 26, 2014.
12. On November 6, 2014, a Notice of Proof Needed was issued to the Petitioner's representative requesting completion of the Medicaid application. The notice also indicates that a new request for Family Care must originate with the ADRC because the original Family Care application is more than 30 days old and was denied.
13. On November 21, 2014, the agency issued a notice to the Petitioner informing him that it was unable to process his MA application received November 17, 2014 due to invalid signature date, and expiration of the Level of Care determination.
14. On December 4, 2014, the agency issued a Notice of Decision to the Petitioner's representatives informing the Petitioner that the application for Medicaid was denied on August 1, 2014 due to assets and income over the program limit. The notice also informed the Petitioner that Family Care was denied effective September 1, 2014 due to income over the program limit.

DISCUSSION

Generally a person cannot have more than \$2,000 in assets and still be eligible for medical assistance. However, in order to prevent the spouse of an institutionalized person from becoming impoverished, the institutionalized spouse can allocate assets to the spouse who remains in the community. See Wis. Stat. § 49.455. The amount that can be allocated depends upon the amount of assets the couple has when the agency performs an assessment.

The law currently allows couples whose liquid assets are between \$100,000 and \$227,280 to assign half of the assets to the community spouse. Those whose assets are below \$100,000 can assign \$50,000 to the spouse in the community. Wis. Stat. § 49.455(6)(b); Medicaid Eligibility Handbook, § 18.4.3. Because the applicant can also have \$2,000 in assets, this amount is added to the total amount of assets that a couple could have and one would still be eligible for medical assistance.

The county agency determined that the petitioner had \$96,809.12 in countable assets when it performed the assessment in August, 2014 meaning that total household assets had to be \$52,000 or less for Petitioner to be eligible.

The Petitioner's dispute is not with the amount of assets that the agency determined existed on August, 2014. The dispute is with regard to the date the agency should use to determine the amount of assets for purposes of determining eligibility.

The Petitioner first applied for MA when an application was submitted on his behalf on August 1, 2014. On August 19, 2014, a Family Care application was submitted and the Level of Care determination was received by the agency on August 26, 2014.

The agency determined the Petitioner's assets using a date of August 18, 2014. The Petitioner argues that the agency should have used March 25, 2014 as the asset assessment date based on the Petitioner's Level of Care determination completed that day. The Petitioner argues this was the date of the first request for community waivers. The Petitioner relies on the following language in MEH, §18.4.2:

“The IM Agency must make an assessment of the total countable assets of the couple at the:

1. Beginning of the person's first continuous period of institutionalization of 30 days or more, or
2. Date of the first request for community waivers, whichever is earlier.”

In a companion case, I concluded that the agency properly used August 19, 2014 as the asset assessment date in determining the Petitioner's eligibility for Family Care. I found that the March 25, 2014 Level of Care determination was not a request for community waivers because the Petitioner did not submit an application or otherwise indicate an intent to apply for Medicaid or Family Care until August, 2014. See DHA Case No. FCP/162467.

I make a similar conclusion here. The agency properly determined the Petitioner's assets when the MA application was filed in August, 2014 and properly determined the Petitioner's assets exceeded the asset limit.

CONCLUSIONS OF LAW

The agency properly used an asset assessment date of August 19, 2014 in determining the Petitioner's eligibility and properly concluded the Petitioner's assets exceeded the asset limit.

THEREFORE, it is

ORDERED

That the Petitioner's 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.

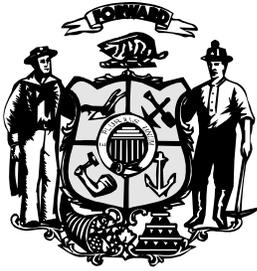
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 23rd day of February, 2015

\sDebra Bursinger
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 February 23, 2015.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability
Attorney Patrick Schultz