



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

MGE/163034

PRELIMINARY RECITALS

Pursuant to a petition filed January 05, 2015, 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 hearing was held on February 17, 2015, at Appleton, Wisconsin.

The issue for determination is whether the agency erred in its denial of the 11/11/14 application for nursing home MA.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) was a resident of Outagamie County. Petitioner has passed away.
2. Petitioner applied for nursing home long-term care MA on 11/11/14.

3. Among petitioner's assets was a Wisconsin Retirement System benefit with an available separation payout of \$17,252.59.
4. Petitioner also had long term disability insurance through Redact which paid \$875 per month.
5. On 12/1/14 the agency denied MA on the basis that petitioner was over the asset limit.
6. Petitioner appealed.

### DISCUSSION

The MA asset limit for a group of one is \$2,000. Wis. Stat., §49.47(4)(b)3m. MA policy confirms that the MA asset limit for a group of one is \$2,000. Medicaid Eligibility Handbook, Appendix 39.4.1, "Elderly, Blind & Disabled (EBD) Assets and Income Table. If available assets are above that 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, 16.2.1. In the instant case, the petitioner's total assets during November 2014 (cash payout value of separation benefit from retirement account) were above the \$2,000 MA asset limit.

Petitioner argues that the Medicaid Eligibility Handbook allows an exception to the consideration of the retirement benefit in this case. The *MEH*, at § 16.7.21, provides that:

Retirement benefits include work-related plans for providing income when employment ends (e.g. pension disability or retirement plans administered by an employer or union).

Other examples of retirement funds include accounts owned by the individual, such as Individual Retirement Accounts ( IRA ) and plans for self-employed individuals, sometimes referred to as KEOGH plans.

1. Employment related pension plans should be treated as follows.
  - a. If an applicant/recipient has the ability to cash in a work related benefit, the net amount of the benefit (after any penalties but before any tax withholding) available to the applicant/recipient should be treated as an available asset. Some retirement benefit plans allow employees to cash in their benefits as a lump sum payment when they leave their job instead of waiting until they reach retirement age to get the pension. ***However, do not count retirement funds as an available asset*** if the applicant/recipient has to quit a job to get at the retirement funds, ***or if the applicant/recipient is receiving periodic payments from the retirement benefit plan.***
  - b. If the applicant/recipient does not have access to the account's principal in his/her retirement benefit plan, the principal should be treated as an unavailable asset.
  - c. Periodic payments made from a work-related retirement benefit plan should be counted as income in the month of receipt.

*MEH*, at § 16.7.21 (emphasis added).

The petitioner argues that she is receiving payments from the retirement plan and thus the account should not be counted per the highlighted provision in the above passage. But this argument is meritless. The “periodic payments” that petitioner argues are currently being made are payments from **Redact** to petitioner. **Redact** is the long-term disability insurer under a benefit plan from the state of Wisconsin. Petitioner argues that if she takes the cash from the retirement plan payout then the LT disability payment will end.

The rule is clear that the periodic payments must be “from the retirement benefit plan.” The payments of which petitioner refers are from a LTD insurer, not from the plan. That the LTD insurance terminates if petitioner cashes out the plan does not matter. The agency correctly counted the retirement cash separation benefit as an available asset.

### **CONCLUSIONS OF LAW**

The agency correctly determined that the retirement funds placed petitioner over the asset limit for MA.

**THEREFORE, it is** **ORDERED**

That this 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 Madison,  
Wisconsin, this 11th day of March, 2015

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\sJohn P. Tedesco  
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 March 11, 2015.

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