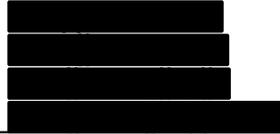




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MGE/163863

PRELIMINARY RECITALS

Pursuant to a petition filed February 07, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on March 18, 2015, at West Bend, Wisconsin.

The issues for determination are whether Petitioner's appeal was timely as to a November denial of a request for institutional Medicaid, timely as to a February 2015 determination as to the start date of Medicaid eligibility and whether the agency correctly counted an insurance policy when determining Petitioner's Medicaid eligibility start date.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Ken Benedum

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Washington County. She was born in 1932 per ForwardHealth records.

2. An application for institutional Medicaid was filed by or on behalf of Petitioner on or about October 17, 2014. Backdating to September 2014 was requested. The record is not clear whether this was a new application because eligibility lapsed or a review - the agency indicates this was an application, Petitioner's representatives indicate it was a review.
3. Petitioner's October 17, 2014 Medicaid application was denied because of assets; specifically, the cash value of a life insurance policy. A Notice of Decision dated November 10, 2014 was sent to Petitioner. It did include appeal instructions. The appeal deadline was noted to be December 26, 2014.
4. The asset that put Petitioner over the Medicaid asset limit was a life insurance policy with a face value of \$1000.00, a death benefit of \$2285.52 and a cash surrender value of \$2074.97 with a small loan balance against the cash surrender value.
5. The policy involved here was surrendered - with the request for surrender sent to the insurance company on December 16, 2014 and a check for \$2049.20 was sent to Petitioner and deposited to Petitioner's checking account on December 22, 2014.
6. Again the record is not clear but either a second institutional Medicaid application was filed on behalf of Petitioner in January 2015 or there was subsequent agency action on the October 17, 2015 application/review.
7. A check was written to the nursing home in which Petitioner resides in early January 2015 bringing her assets under the Medicaid asset limit of \$2000.00. She was determined eligible for institutional Medicaid as of January 1, 2015. And, again, it is not clear as to whether this was a continued processing of the earlier application or a new application. A positive Notice of Decision dated February 3, 2015 was sent to Petitioner's POA.
8. This appeal was filed on February 10, 2015.

DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medical Assistance matters must be filed within 45 days of the notice of the county agency decision. §49.45(5)(a), *Wis. Stats.* This appeal was filed with the Division of Hearings and Appeals past the December 26, 2014 appeal deadline and the Division of Hearings and Appeals has no authority to expand the appeal deadline; thus this appeal is untimely as to the initial denial. It is, however, timely as to the February 3, 2015 NOD and that determination of eligibility date.

Petitioner's representatives testified that Petitioner's life insurance policy has never been considered an asset in the past so don't understand why it was counted now.

The asset limit for a medically needy elderly, blind or disabled group of one is \$2000.00. Medicaid Eligibility Handbook, (MEH), §39.4.1. Also relevant here is the following MEH provision:

16.7.5 Life Insurance

Face value is the basic death benefit of the policy exclusive of dividend additions or additional amounts payable because of accidental death or under other special provisions. Cash value means the net amount of cash for which the policy could be surrendered after deducting any loans or liens against it.

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 (*The face value of a life insurance policy is the policy's death benefit (the amount paid out at the death of the insured) at the time a life insurance policy is purchased.*) of all policies 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.

Life insurance policies always have a face value, but do not always have a cash value. Term life insurance is limited to a defined time period as stated in the policy and does not usually have cash value. Group life insurance is usually term insurance and usually has no cash value. An endowment insurance plan generally has cash value.

...
MEH, §16.7.5.

I am concluding that Petitioner is correct – the policy should not have been counted as an asset. At the time of purchase the face value was \$1000.00. Again, per the *MEH, §16.7.5*: “(The face value of a life insurance policy is the policy’s death benefit (the amount paid out at the death of the insured) at the time a life insurance policy is purchased.)” Looking back at earlier versions of the MEH – this policy has been in place since at least 2009. *See, e.g., MEH Release #s 10-02, effective 1/1/09 and 10-01 effective 4/2/10.*

The question becomes what can be done about this at this point by the Division of Hearings and Appeals. Again, the appeal is not timely as to the November 2014 denial of the October 2014 application/review. Nonetheless, it is timely as to the question of backdating from January 2015. Medicaid may be backdated to the first day of the third month prior to the month of application. *MEH, §2.8.2.* Assuming there was a new request for assistance in January 2015 this potentially permits backdating to October 2014. The agency will have to review eligibility at least back to that date.

CONCLUSIONS OF LAW

1. That Petitioner’s appeal is not timely as to the November 10, 2014 denial of institutional Medicaid for Petitioner, thus the Division of Hearings and Appeals is without to make a decision on the merits of that denial.
2. That Petitioner’s appeal is timely as to the February 3, 2015 Notice of Decision establishing January 1, 2015 as Petitioner’s Medicaid eligibility date.
3. That the asset identified as the reason for the denial of Petitioner’s Medicaid request, the life insurance policy that was the subject of this decision, should not have been counted as an asset as the face value at time of purchase was \$1000.00.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to take the steps necessary to redetermine Petitioner’s eligibility for institutional Medicaid at least as of October 2014. This may be done within 10 days of the date of this decision. If the agency determination is not in Petitioner’s favor a new appeal may be filed.

As to the request for Medicaid eligibility for September 2014, this appeal is denied.

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.

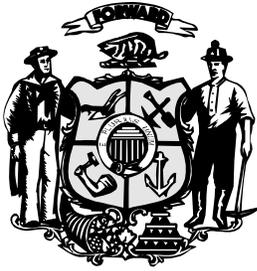
APPEAL TO COURT

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 15th day of April, 2015

\sDavid D. Fleming
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 April 15, 2015.

Washington County Department of Social Services
Division of Health Care Access and Accountability