



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

MGE/164570

PRELIMINARY RECITALS

Pursuant to a petition filed March 10, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on May 05, 2015, at Waupaca, Wisconsin. At the request of the parties, the record was held open until May 19, 2015 for consecutive written closing arguments to be sent to DHA (with a copy sent to the other party). The parties timely submitted their arguments to DHA which are received into the hearing record.

The issue for determination is whether the county agency correctly denied the petitioner's December 2, 2014 MA nursing home long term care application, due to his community spouse's (Redact) (Redact) refusal to sign petitioner's MA application or provide required financial verification to the agency, as required by the Medicaid Eligibility Handbook, 2.5.3 and 17.17.1.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Petitioner's Representative:

Redact, authorized representative
Redact
Redact
Redact Redact

Respondent:

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

By: Redact, ESS
Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [Redact]) is a 75 year old resident of Waupaca County.
2. The petitioner was admitted to the [Redact] f [Redact] in [Redact], WI on October 16, 2014 from a homeless status.
3. On or about December 2, 2014, the petitioner applied at the county agency for MA nursing home long term care with requested backdating to October 1, 2014. At the time of his application, he had a community spouse, [Redact] & [Redact], who lived in the community. The petitioner also included an Undue Hardship Waiver request.
4. The petitioner was married for about 25 years to [Redact] & [Redact], and believed inaccurately that they were divorced about two years ago. Waupaca County Court records indicate that the divorce proceedings which had begun were discontinued in a May 22, 2012 Stipulation to Dismiss the Divorce.
5. The county agency made significant efforts to contact [Redact] & [Redact], and when contacted [Redact] refused to cooperate or sign any MA application as petitioner's community spouse.
6. The petitioner left the [Redact] f [Redact] on January 9, 2015 and moved in with a friend.
7. The county agency sent a February 2, 2015 notice to the petitioner stating that his MA application and undue hardship request were both denied due to: a) refusal of his community spouse to sign his application as required by MEH 2.5.3; b) petitioner is no longer residing in the [Redact] [Redact] as of January 9, 2015, and thus no longer in a nursing home or care facility; and c) the household income of petitioner and his wife are above the MA income eligibility limits.

DISCUSSION

During the May 5, 2015 hearing, the county representative, ESS [Redact], established that the county agency correctly denied the petitioner's December 2, 2014 Institutional MA application, due to his wife's refusal to sign the application or provide required financial verification to the county agency. At the time of his application, petitioner was in a nursing home and remained married to [Redact] & [Redact], as his community spouse. As indicated above, county agency made significant efforts to contact [Redact] [Redact], and when contacted [Redact] refused to cooperate or sing any MA application as petitioner's community spouse. Due to a change in Spousal Impoverishment policy (DHS Operations Memo 13-38), the petitioner's wife, [Redact] & [Redact], was required to cooperate (participate in petitioner's application process) including providing her financial information regarding the petitioner's financial eligibility for Institutional MA. The agency explained to petitioner and his wife if Mrs. [Redact] refuses to cooperate, sign the application or provide proof of her assets and income, then the petitioner's MA application would be denied.

The hearing record is uncontested that Mrs. [Redact] refused to cooperate, refused to sign petitioner's application, and refused to provide her financial information to the county agency. During the hearing, petitioner's representatives, [Redact] f [Redact] [Redact] and [Redact], were unable to refute with any reliable evidence that petitioner's wife refused to cooperate with petitioner's application as established by the county agency.

DHS Operations Memo 13-38 (dated 11/7/2013) states in pertinent part:

Beginning with applications dated November 11, 2013 or later, financial information and signatures are required from both the spouse applying for LTC (including Family Care, Partnership and Pace) or Institutional Medicaid and his or her community

spouse. **Eligibility will be denied for an individual whose community spouse refuses to sign the application, refuses to disclose the value of assets, or refuses to provide required information on income or resources.** This means that “Just say no” is no longer a viable strategy for shielding assets. (Wis. Stat. 49.455(5)(e)).

(Emphasis added).

The petitioner’s representative was unable to refute with any reliable evidence that DHS Operations Memo 13-38 applied to the denial of petitioner’s December 2, 2014 MA application. Accordingly, based upon the above, I conclude that the county agency correctly denied the petitioner’s December 2, 2014 Institutional MA application, due to his wife’s refusal to sign the application or provide required financial verification to the county agency as required by DHS Operations Memo 13-38.

CONCLUSIONS OF LAW

1. The county agency correctly denied the petitioner’s December 2, 2014 Institutional MA application, due to his wife’s refusal to sign the application or provide required financial verification to the county agency as required by DHS Operations Memo 13-38.
2. The county agency correctly denied the petitioner’s December 2, 2014 MA nursing home long term care application, due to his community spouse’s (Redact \ Redact) refusal to sign petitioner’s MA application or provide required financial verification to the agency, as required by the Medicaid Eligibility Handbook, 2.5.3 and 17.17.1.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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 22nd day of June, 2015

\sGary M. Wolkstein
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 June 22, 2015.

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

Redact @dva.wisconsin.gov