



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact
[Redacted]

DECISION

FCP/165708

PRELIMINARY RECITALS

Pursuant to a petition filed April 29, 2015, under Wis. Admin. Code, §DHS 10.55, to review a decision by the Milwaukee Enrollment Services to discontinue Family Care Program (FCP) eligibility, a hearing was held on May 19, 2015, by telephone.

The issue for determination is whether the agency correctly determined that a retirement account was a countable asset for FCP purposes.

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact
[Redacted]

Respondent:

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

By: [Redacted]
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. Petitioner became eligible for the FCP in March, 2014, transferring from BadgerCare Plus (BC+) eligibility. BC+ does not have an asset test for eligibility. See BC+ Handbook, Appendix 20.1.
3. Petitioner had an FCP renewal in March, 2015. On her renewal she reported having an IRA with [Redacted]. The retirement account actually is a 401(k) account with a balance of \$35,121, which petitioner verified after the agency requested verification. See Exhibit 11.

4. By a notice dated April 15, 2015, the agency informed petitioner that FCP (called “Community Waivers” in the notice) eligibility would end May 1, 2015 because assets were over the limit.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized under Wisconsin Statute, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. See also Medicaid Eligibility Handbook, Chapter 29, available at www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm.

Unlike the BC+ MA program, the FCP program operates under the traditional MA rules for elderly and disabled individuals. See MA Handbook, Appendix 29.1. Therefore to be eligible for FCP, a person must meet full benefit MA non-financial and financial requirements, with special provisions regarding income. Wis. Admin. Code, §DHS 10.34(2); MA Handbook, App. 29.3.1. Assets are treated the same as for elderly/disabled MA purposes except that married individuals can come under special spousal impoverishment rules as if they were institutionalized. See Wis. Admin. Code, §DHS 10.34(d), which refers to Wis. Stat., §§49.454 and 49.47(4)(b). §49.454 provides specific rules concerning trusts; §49.47(4)(b) refers to assets in general.

Wis. Stat., §49.47(4)(b) provides that assets for an MA applicant cannot be above \$2,000. It provides exemptions that include retirement assets that accrued while the person was eligible for a community options program or MA. Otherwise retirement accounts are not exempt. Although the issue was not mentioned during the hearing, petitioner’s retirement account appears to pre-date any MA eligibility.

The MA Handbook, App. 16.7.21, provides:

Individually owned retirement funds, such as IRA’s, Keogh plans, etc., that are owned by the applicant/recipient should be counted as available non-exempt assets (minus any early withdrawal penalty) for the Medicaid applicant/recipient. The applicant/recipient always has access to the principal in these accounts, subject to an early withdrawal penalty.

Although not mentioned in the Handbook provision, a 401(k) plan is the same type of individually-owned retirement fund to which the owner has access subject to early withdrawal penalties. See a description at <http://guides.wsj.com/personal-finance/retirement/what-is-a-401k/>.

The upshot is that the agency correctly counted petitioner’s retirement account as an asset when it processed her annual renewal. As noted during the hearing, assets were not reviewed when petitioner rolled her BC+ eligibility into FCP eligibility (it is unclear why there was no asset review then), but it is evident that the agency correctly reviewed petitioner’s assets at renewal. While it is true that cashing in the account would lead to early withdrawal penalties and tax consequences, it is a virtual certainty that petitioner nevertheless would net more than \$2,000 of the account. If assets are over \$2,000, petitioner is not eligible for elderly/disabled MA, and thus she is also ineligible for the FCP.

If it would take more than 30 days to cash in the account, the account would not be counted for MA and FCP purposes during the waiting period. See Handbook, App. 16.2.1. However, when the money is received it would start being counted again. Petitioner might also check to see how much the penalties and taxes would be to determine if she would net less than \$2,000 after the cash-in. As I noted, it is unlikely that the amount would be that little, but it would be a good idea to check.

The Division of Hearings and Appeals does not have authority to make exceptions to eligibility rules. I thus must conclude that the agency correctly counted the retirement account as an available asset, and that its value puts petitioner's assets over the MA/FCP eligibility limit.

CONCLUSIONS OF LAW

The agency correctly determined that the value of petitioner's 401(k) retirement account puts her over the asset limit for FCP eligibility.

THEREFORE, it is ORDERED

That 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 26th day of May, 2015

\sBrian C. Schneider
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 May 26, 2015.

Milwaukee Enrollment Services
Office of Family Care Expansion