



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case name

DECISION

MGE/165944

PRELIMINARY RECITALS

Pursuant to a petition filed May 11, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wisconsin Department of Health Services, by the Milwaukee Enrollment Services agency, in regards to denial of Medical Assistance, a telephone hearing was held on May 28, 2015, at Milwaukee, Wisconsin. At the request of the petitioner, the record was held open for 10 days for the submission of additional information.

The issue for determination is whether the Department, by its county agent, correctly denied the petitioner's application for Medical Assistance due to assets in excess of program limits.

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, Income Maintenance Specialist
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # Redact) is an 82 year-old resident of Milwaukee County. She applied for Medical Assistance – Nursing Home Long Term Care on April 9, 2015.
2. The county agency requested verification of the cash surrender value of the petitioner’s life insurance and of her bank accounts, and the petitioner timely provided the requested verification.
3. The cash surrender value of the life insurance policy was reported to be \$1,063. The petitioner’s sole bank account was reported to have a net balance of \$1,057.70, after deduction of her Social Security and two pension payments in that month. The petitioner’s daughter and Power of Attorney admits the cash surrender value and net bank balance amounts were mathematically correct, but asserts that the bank account was held jointly between the petitioner and two adult daughters, Redact and her sister, and thus should not all be attributed to the petitioner.
4. On May 7, 2015, the Department issued a Notice to the petitioner informing her that her April 9, 2015, application for MA had been denied because she had \$2,120.70 in countable assets and this exceeded the \$2,000 asset limit.
5. The bank balance was verified as of April 8, 2015, but the balance and countable asset balance in that bank account as of April 30, 2015, is unknown in this record.
6. The petitioner’s checking account is a joint account held with her two adult children, but neither adult child is an EBD applicant or recipient in April, 2015.
7. It is unknown on this record whether the petitioner’s countable assets were less than \$2,000 as of April 30, 2015.

### DISCUSSION

The asset limit for a one-person household applying for Medical Assistance, including Nursing Home Long Term Care coverage, is \$2,000. Medicaid Eligibility Handbook, §39.4.1. The cash surrender value of life insurance is a countable asset. Medicaid Eligibility Handbook, § 16.7.5. So may be bank accounts, like the instant checking account. Accounts jointly held may be subject to three rules depending on the classification of the holders. Here, we have an asserted joint account owned by the EBD Medicaid applicant herself and allegedly with her two adult daughters. No evidence was presented in this record that shows that either daughter receives EBD Medicaid coverage. Therefore, the applicable policy statement is therefore the following:

#### **16.4.1.2 EBD Medicaid Applicant/Recipient Non EBD Co-Owner**

*When an EBD Medicaid applicant/member shares an account with an individual or individuals who are not EBD Medicaid applicant(s)/member (s) deem the full share to the EBD Medicaid applicant/member.*

Full share” means an amount equal to the account balance. The account balance is the total of the principle and any interest retained in the account, minus any withdrawal penalties or charges.

Applying the preceding policy may result in considering available to a fiscal test group more money from a joint account than is actually in that account. If that occurs, deem an equal share to each account holder who is in the fiscal test group.

Medicaid Eligibility Handbook, § 16.4.1.2 (Note: Italicized for emphasis.)

Therefore, in this case it would appear that the joint ownership still results in the conclusion that the petitioner is ineligible as countable non-exempt assets exceed \$2,000.

However, I reviewed the evidence, and I find that the agency has used a running checking account ledger for the account that ends as of April 8, 2015, the day before the application. The agency representative correctly knew that ongoing monthly income pouring into the checking account is disregarded for one month, but be given this limited bank statement data ending on April 8, 2015, it cannot be determined whether the petitioner subsequently dropped below the asset limit by the last day of the month, i.e., April 30, 2015. Application processing usually contemplates a 30 day processing period. Here, the agency did not request a bank statement for all of April, 2015. I cannot tell if the checking account balance, after disregards of income for 30 days like Social Security and pensions, would have brought this applicant under \$2,000. The best that can be said is maybe, maybe not. Accordingly, I will remand the matter to the agency to rescind the denial action; issue a verification request to the petitioner for her full April, 2015, bank statement; and review and re-determine her eligibility for MA retroactive to April 1, 2015, utilizing the countable amount of checking account assets as of April 30, 2015, with written notice of the outcome.

As a note to Ms. Redact, this bank statement must be timely provided to the agency within 10 days of the date of the request or in the alternative form, the appeal is dismissed entirely by my ORDER below. She must immediately act to verify to the agency the bank statement for April, 2015, or the matter will not be reviewed further by the agency.

### CONCLUSIONS OF LAW

That it is unknown on this record whether the agency correctly determined the petitioner was over assets for MA in April, 2015; the matter must be remanded for verification, review, and re-determination retroactive to April 1, 2015.

**THEREFORE, it is**

**ORDERED**

That the matter is remanded with instructions to: rescind the MA denial action of May 7, 2015; immediately issue a verification request to the petitioner for her April, 2015, bank statement, giving her 10 days to verify; if the petitioner verifies within 10 days of the request, then the agency is to review and re-determine her eligibility for MA of any classification, with written notice, retroactive to April 1, 2015. These actions shall be completed within 10 days of the date of timely verification. **IT IS FURTHER ORDERED**, *in the alternative form*, that if the petitioner does not timely verify the bank statement, then the petition is dismissed in its entirety.

### **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 9th day of June, 2015

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\sKenneth D. Duren, Assistant Administrator  
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 9, 2015.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability