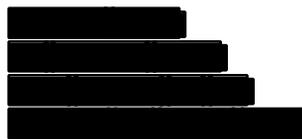




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MGE - 175221

PRELIMINARY RECITALS

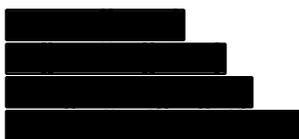
Pursuant to a petition filed on June 23, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the St. Croix County Health & Human Services regarding Medical Assistance (MA), a hearing was held on August 10, 2016, by telephone. The petitioner's appeal was dismissed on July 14, 2106, because he did not appear at his July 13, 2016, hearing. His July 18, 2016, request for a rehearing was granted on July 19, 2016.

The issue for determination is whether the county agency correctly determined that the petitioner was ineligible for institutional medical assistance because his assets exceeded the program's \$2,000 limit.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
St. Croix County Health & Human Services
1752 Dorset Lane
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of St. Croix County.
2. The department denied the petitioner's May 2, 2016, application for institutional medical assistance on May 27, 2016, because his assets exceeded the program's limit.
3. The petitioner is the beneficiary of an irrevocable trust he and his late wife established with their assets in 2005. The trust provides income for the petitioner.
4. The trust established for the petitioner held a life insurance policy whose cash surrender value is \$114,052.55 and face value is \$750,000.

### DISCUSSION

A person cannot receive medical assistance if his available assets exceed \$2,000. Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. § 49.47(4)(b)3g.e. Medical assistance eligibility begins "on the date on which all eligibility requirements were met, but no earlier than the first day of the month 3 months prior to the month of application." Wis. Admin. Code § DHS 103.08(1). The county agency denied the petitioner's May 2, 2016, application for past and current medical assistance because he is the beneficiary of a trust whose assets include a life insurance policy whose value exceeds \$2,000. (He reapplied and was found eligible for benefits beginning in June 2016, but that is not the subject of this appeal.)

When an individual, his spouse, or someone acting on his behalf sets up an irrevocable trust using his assets for part or all of it, that trust is considered available to him if "there are circumstances" he could receive or benefit from payments from the trust. Wis. Stat. § 49.454. The petitioner and his late wife set up an irrevocable trust in 2005. It is available to him because he is entitled to the trust's income. The cash value of a life insurance policy is considered an available asset if the total face value of all policies held by the person exceeds \$1,500. Wis. Admin. Code, § DHS 103.06(10). The life insurance policy in the petitioner's trust has a face value of \$750,000 and a cash surrender value of \$114,052.55. It does not matter that he is not the beneficiary of the policy because he can still cash it in. If the person is over 65 or disabled, money set aside in a burial trust is exempt, but the petitioner had not established such a trust by the end of May 2016. *See* Wis. Stat. § 49.47(4)(b). Therefore, the county agency correctly determined that this asset caused him to be ineligible for medical assistance.

### CONCLUSIONS OF LAW

1. The assets in the petitioner's trust, including a life insurance policy, are available to him.
2. The county agency correctly determined that the petitioner is ineligible for institutional medical assistance because his assets exceeded the program's \$2,000 limit.

**THEREFORE, it is**

**ORDERED**

The petitioner's 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, **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 23rd day of August, 2016

\s \_\_\_\_\_  
Michael D. O'Brien  
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 August 23, 2016.

St. Croix County Health & Human Services  
Division of Health Care Access and Accountability