



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MGE - 175282

PRELIMINARY RECITALS

Pursuant to a petition filed on June 28, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wood County Human Services - WI Rapids regarding Medical Assistance (MA), a hearing was held on August 11, 2016, by telephone.

The issue for determination is whether the petitioner was eligible for institutional medical assistance under the program's spousal impoverishment provisions in May 2016 if his and his wife's assets exceeded \$52,000 throughout that month.

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]
Wood County Human Services - WI Rapids
220 Third Avenue South
Suite 4
Wisconsin Rapids, WI 54495

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

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) was a resident of Taylor County. He died on May 24, 2016.
2. The petitioner and his wife had over \$52,000 in assets throughout May 2016.
3. The department denied the petitioner's request for institutional medical assistance for May 2016 because his assets exceeded the program's limit throughout that month.

DISCUSSION

In May 2016, the petitioner unexpectedly became sick, entered a nursing home, and on May 22, 2016, died. His family seeks medical assistance for him for May 2016 to pay his nursing home bill. The department denied his application after determining that his assets exceeded the program's limit.

These unfortunate, unexpected events caused confusion in his family's attempt to obtain medical coverage for him. Because he was expected to recover, he did not apply for disability benefits. He sought but never obtained insurance through the Marketplace. His relatives thought that the Marketplace would share information with the county agency, but it did not. As a result, the county agency was not aware of his situation until June 2016.

No one can fault the petitioner's relatives for the course of action they took, but administrative law judges have no equitable powers that allow them to consider the fairness of a situation. Rather, they must apply the law as it is written. This means that the petitioner's only avenue to medical assistance eligibility is through the spousal impoverishment provisions of the medical assistance program. These provisions increase the usual medical assistance asset limit to prevent the spouse who is not institutionalized from falling into poverty.

The spousal impoverishment provisions allow couples with less \$100,000 in assets to assign \$50,000 of the assets to the community spouse. Wis. Stat. § 49.455(6)(b); *Medicaid Eligibility Handbook*, § 18.4.3. Adding the \$2,000 an applicant is always allowed to the \$50,000 limit spousal impoverishment limit means that, as a practical matter, a couple can have \$52,000 in liquid assets and still have one of them eligible for medical assistance immediately. See Wis. Stat. § 49.47(4)(b)3g.e. for the \$2,000 asset limit. When retroactive benefits are requested, eligibility depends upon whether the assets exceeded the limit on the last day of the month. *Medicaid Eligibility Handbook*, § 2.8.2.

Those petitioner's witnesses concede that his household's assets were several thousand dollars above \$52,000 but point out that subtracting his funeral bill would bring the assets below this amount. Paying the funeral bill in May was impossible because they did not receive it until June. While I understand this argument, medical assistance rules do not allow debts to be deducted from assets when determining eligibility. Because I have no equitable powers, I must base the petitioner's eligibility solely on whether he met the asset limit on the last day of May, the month for which he seeks benefits. He does not. Therefore, I must uphold the department's denial of eligibility.

CONCLUSIONS OF LAW

The petitioner is not eligible for medical assistance in May 2016 because his assets exceeded the program's limit throughout that month.

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 25th 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 25, 2016.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability