



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

Case #: **DECISION**
- - - - -

PRELIMINARY RECITALS

On May 24, 2016, the above petitioner filed a hearing request under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to challenge a decision by the Barron County Department of Human Services regarding Medical Assistance (MA). The hearing was held on June 23, 2016, by telephone.

The issue for determination is whether the department correctly denied the petitioner's application for medical assistance because he did not adequately verify his assets.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Petitioner's Representative:

Attorney Peter E. Grosskopf
Grosskopf Law Office LLC
1324 W Clairemont Ave Ste 10
Eau Claire, WI 54701

Respondent:

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

By: Sarah Antczak

Barron County Department of Human Services
Courthouse Room 338
335 E Monroe Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # :) is a resident of Barron County.

2. The petitioner applied for institutional medical assistance on April 18, 2016, requesting benefits retroactive to March 1, 2016. *Exhibit 6.*
3. On April 16, 2016, the Centralized Document Processing Unit requested that the petitioner provide the following information by May 18, 2016:
 - a. "Asset – Whole life – [account number omitted] Minnesota Life: Cash surrender value" [wife's]
 - b. "Asset: Checking Account – [account number omitted] Wells Fargo – Value of this asset" [petitioner's]
 - c. "Asset: Savings Account – [account number omitted] Shell Lake State Bank: Value of this asset" [wife's]
 - d. "Asset: Stocks and bonds – [account number omitted] Bank of America 343 Shares: Value of this asset" [wife's]
 - e. "Asset: Savings Certificate – [account number omitted] Shell Lake Bank: Value of this asset" [wife's]
 - f. "Asset: Checking Account – [account number omitted] Wells Fargo: Value of this asset" [wife's]
 - g. "Asset: Money Market Account – [account number omitted] US Bank – Inheritance Account: Value of this asset" [wife's]
 - h. "Asset: Money Market Account – Inheritance Account – Value of this asset" [wife's]
 - i. "Asset: Savings Account – [account number omitted] Associated Bank: Value of this asset" [wife's]
 - j. "Asset: Savings Account – [account number omitted] Associated Bank: Value of this asset" [wife's]
 - k. "Asset: Checking Account – [account number omitted] Associated Bank: Value of this asset" [wife's]
 - l. "Asset: House: real estate sales agreement" [wife's]
 - m. "Other Pension/Retirement: Amount received per month" [wife's]

Exhibit 1.

4. The petitioner responded to the request.
5. After receiving the petitioner's documents, the county agency wrote a letter to the petitioner's attorney dated April 21, 2016, stating that because there were discrepancies it must review documents from the last five years to determine if the petitioner attempted to become eligible by divesting assets:

After reviewing the assets that were provided there were a few discrepancies that were found in regards to large withdrawals from bank account and large wife transfers. If discrepancies are found when looking at assets, we are required to look back 5 years in determining if there may be any Divestment for Wisconsin Medicaid. We must then determine if any of the funds were given away or used in a way that did not directly benefit [the petitioner]. *Letter from Barron County EBT/LTC Team to Peter Grosskopf; Exhibit 2.*

The agency did not indicate what the discrepancies were or what policy it was relying on.

6. The county agency's April 21, 2016 letter requested the following information by May 18, 2016:
 - a. "Please provide bank statements from March 2011 through March 2016 as well as a listing of any assets such as life insurance policies, vehicles, real estate, etc. that may have been cashed out or given away. Please provide verification of all checks and/or withdrawals over \$500 and include verification of what they were used for and to whom it was given to (if applicable)."

- b. "Please provide verification of Bank of America stock and the number of shares owned."
- c. "Please provide varication of current cash surrender value for [wife's] Life Insurance Policy with Minnesota Policy # [omitted]."
- d. "Per phone call with [wife] on 4/21/2016 she stated that she is currently residing at [address omitted], there this will be an exempt asset. If this information is incorrect please provde us with the correct information."
- e. "In regards to the property at [address omitted], we received the Real Estate Sales Agreement stating the home was listed for sale on 3/24/2016 in the amount of \$192,500.00. The Fair Market Value of the property is \$143,900.00. Please provide a statement from your Realtor as to why the list price is \$48,600 above Fair Market Value."
- f. "In regards to the general contractor agreements that we received one was signed and dated 2/19/2015 totaling \$11,000. We will need you to provide receipts for the replacement of garage doors, installation of dishwasher & dryer, Hearing Aids and receipts for the cost to move to Hudson. The second general contractor agreement is signed and dated 4/6/2016 totaling \$19,450.00 for new windows at [omitted address] Please provide a date when you anticipate this service being completed and if it has already been completed please provide a receipt."
- g. "In addition to the general contractor agreements I noticed there was a wire transfer to [wife's son] in the amount of \$30,450.00 on April 1, 2016. Can you please provide clarification as to why this money was wired and if it was for the services listed above. Can you please clarify why [he] received the money and not [name omitted], as the contract states [petitioner's wife] will pay [her]."

Id. [all information quoted verbatim]

7. In response to this request, the petitioner sent the county agency a flash drive with 638 pages of documents. In addition, his attorney wrote a three-page letter addressing each of the agency's concerns. He pointed out that the petitioner's wife had paid \$20,000 to settle a claim in Estonia involving property that had been seized by the Communist government 50 years earlier. He also indicated that he was sending copies of Shell Lake documents but, because he was not sure those documents were complete, he was sending authorizations for the county agency to obtain anything that was missing. He resubmitted information he believed the agency already had. *Exhibit 3.*
8. The county agency denied the petitioner's application for medical assistance on May 19, 2016, contending that it was still seeking various information from three Wells Fargo checking and savings accounts, two US Bank money market accounts, four Shell Lake State Bank accounts, and three associated bank accounts. *Exhibits 4 and 5.*
9. The petitioner made a good-faith attempt to obtain all of the information requested of him.

DISCUSSION

Medical assistance applicants must verify their assets before they can qualify for the program. Wis. Admin. Code, § DHS 102.03(3)(h). The agency usually must determine eligibility within 30 days of when a person fills out an application to the best of her ability, but this period can be extended when there are delays because of the time it takes the applicant to verify his information. Wis. Admin. Code, § DHS 102.04(1). The department's policy is to allow 10 days beyond the normal 30-day period to determine eligibility if the applicant has trouble obtaining verification. *Medicaid Eligibility Handbook*, § 2.7.

The petitioner seeks institutional medical assistance retroactive to March 1, 2016, the month before he applied. The county agency denied the request because it contends he did not completely verify all of the

relevant financial information needed to determine his eligibility within 30 days of his application. He contends that he made a good-faith effort to comply with the agency's request.

The various rules pertaining to verification reflect the tension between ensuring that the indigent receive medical care and state funds are spent only on those who qualify. Imposing strict verification procedures will lead to some who need benefits not getting them because a person may have lost access to the documents needed to complete the verification or lack the physical or mental ability to comply with the request. Conversely, imposing lenient procedures will allow some who should be ineligible for benefits to receive them.

Agencies are instructed to place the primary responsibility for obtaining information on the applicant. Applicants must also resolve questionable information. But agencies cannot "deny eligibility when the member does not have the ability to produce verification." And they must "[a]ssist the member in obtaining verification if he or she has difficulty in obtaining it." *Medicaid Eligibility Handbook*, § 20.5. This policy reflects the regulation found in Wis. Admin. Code § DHS 102.03(1). It requires agencies must to deny applications if a recipient "is able to produce required verifications but refuses or fails to do so." But the regulation also states: "If the applicant or recipient is not able to produce verifications, or requires assistance to do so, the agency may not deny assistance but shall proceed immediately to verify the data elements." *Id.*

The Centralized Document Processing Unit requested that the petitioner provide information by May 18, 2016. He did so. The county agency reviewed the information and wrote him on April 21, 2016, stating that because there were discrepancies it must review documents from the last five years to determine if the petitioner attempted to become eligible by divesting assets. The agency did not indicate what the discrepancies were or what policy it was relying on, but it did request a large amount of additional information. *See Finding of Fact No. 6.* The petitioner responded by providing a flash drive with 638 pages of documents. In addition, his attorney wrote a three-page letter addressing each of the agency's concerns. For example, he pointed out that the petitioner's wife had paid \$20,000 to settle a claim in Estonia involving property that had been seized by the Communist government 50 years earlier. He also indicated that he was sending copies of Shell Lake bank documents but, because he was not sure those documents were complete, he was sending authorizations for the county agency to obtain anything that was missing. He resubmitted information he believed the agency already had. *Exhibit 3.* He also had telephone contact with the worker to discuss what was needed.

The agency reviewed the new submission and determined bits and pieces of various bank accounts were missing. It did not use the releases the petitioner provided because he did not specifically ask for help obtaining information. It then determined that, because 30 days had passed since he applied and information was still missing, he was ineligible for benefits.

After looking at the totality of the circumstances, I disagree. The petitioner may not have specifically asked for help, but the circumstantial evidence is that he did require it, at which point, under Wis. Admin. Code § DHS 102.03(1) and *Medicaid Eligibility Handbook*, § 20.5, the agency had a duty to provide that help. The detail in the petitioner's application, the sheer volume of his documentation, and the telephone calls his attorney made to the agency indicate that he made a good-faith effort to provide all of the required information. Given all of that, when the agency determined that information was still missing, if it wasn't going to obtain that information itself, it should have given the petitioner another 10 days to do so.

That said, even now it is not all that clear what is missing. The petitioner's attorney indicated that he provided some of the information requested twice and that much of the rest is not needed. I have not read through the 638 pages of documentation. The county agency contends that its worker did in a day or two. I will accept that statement, but I don't think it is possible to do so without overlooking something, just as

the petitioner's attorney apparently did. The agency concedes that if there was sufficient documentation, the petitioner would be eligible for medical assistance. The evidence remains somewhat murky, and I understand why the agency denied his application. Nevertheless, I am satisfied after hearing the testimony and reviewing documentation that the documentation is thorough enough to support his eligibility.

CONCLUSIONS OF LAW

The petitioner provided adequate documentation to establish that he has been eligible for institutional medical assistance since March 1, 2016.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it take all steps necessary to make the petitioner eligible for institutional medical assistance retroactive to March 1, 2016.

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 27th day of July, 2016

\s _____
Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 26, 2016.

Barron County Department of Human Services
Division of Health Care Access and Accountability
Attorney Peter Grosskopf