



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FCP - 193270

PRELIMINARY RECITALS

Pursuant to a petition filed on April 5, 2019, under Wis. Admin. Code § DHS 10.55, to review a decision by the Rock County Human Services Department (“the agency”) regarding Medical Assistance (MA), a hearing was held on May 22, 2019, by telephone. The record was held open to allow Petitioner to submit additional documentation (i.e., copies of room and board checks). That documentation was received and marked as Ex. P-2.

The issue for determination is whether Petitioner’s countable assets for the month of February 2019 exceeded \$2,000.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Rock County Human Services Department
1900 Center Avenue
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County who has been receiving Family Care benefits since March 2019. Petitioner receives her Family Care benefits through Inclusa, a managed care organization (MCO).
2. Petitioner resides in an assisted living facility and has a \$719 monthly room and board obligation.
3. On December 10, 2018, Petitioner's organizational representative payee, [REDACTED], printed a check for \$719 (check # [REDACTED]) payable to Inclusa for Petitioner's December room and board obligation. [REDACTED] mailed that check to Inclusa on December 12, 2018.
4. The check identified in the above finding as well as checks [REDACTED] issued on behalf of other FC members in December 2018 were never delivered to Inclusa. This was an anomaly.
5. In February 2019, Inclusa advised [REDACTED] that the December 10, 2019 check had not been received. Accordingly, on February 10, 2019, Inclusa re-issued check # [REDACTED] in the amount of \$719 for Petitioner's December room and board and issued check #5034 in the amount of \$719 for her February room and board. Those checks were mailed to Inclusa on or about February 26, 2019.
6. Check # [REDACTED] and check #5034 cleared on March 11, 2019 and March 8, 2019 respectively.
7. Petitioner received a monthly Social Security payment of \$1,464 on February 1, 2019.
8. The balance in Petitioner's checking account as of the last day of February 2019 was \$4,178.41.
9. The agency found Petitioner to be ineligible for Family Care / Community Waivers in the month of February 2018 based on a determination that her countable assets exceeded \$2,000. The agency issued a notice regarding this finding on February 27, 2019.
10. Petitioner filed a timely appeal.

DISCUSSION

The countable asset limit for Family Care, a Medical Assistance home and community-based long term care waiver program, is \$2,000 for an unmarried individual. *Medicaid Eligibility Handbook (MEH)* §§27.5.1 and 39.4.1. Income received in a month is not counted as an asset unless and until it is retained into the following month. *MEH* §16.1. And, an asset is only countable if it is available. *Id.* at §16.1. An asset is available when the following criteria are met:

1. It can be sold, transferred, or disposed of by the owner or the owner's representative, and
2. The owner has a legal right to the money obtained from sale of the asset, and
3. The owner has the legal ability to make the money available for support and maintenance, and
4. The asset can be made available in less than 30 days.

Id. at §16.2.1. An asset is not available if the member lacks the ability to provide legal access to the assets. *Id.*

The question here is whether Petitioner's countable assets exceeded \$2,000 in February 2019. The agency contended that because Petitioner's checking account balance (\$4,178) less her Social Security payment (\$1,464) exceeded \$2,000 as of the last day of February 2019, she was over the asset limit and thus ineligible for FC in that month. The agency did not contend that there was any other countable asset

at issue. Petitioner's representative argued that the value of the two room and board checks (i.e., \$1,438) should be subtracted because those checks were both cut and mailed by the last day of February. The agency countered that the organizational representative payee could still have cancelled the check and that the value of those checks must therefore be counted until they are cleared.

I agree with Petitioner. Once Petitioner's organizational representative payee cut those checks and placed them in the mail, Petitioner no longer had the right to make that money available for himself. I also note that these checks were for the purpose of satisfying a room and board obligation imposed by the rules governing the Family Care Program.

For these reasons, the value of the two checks in question was unavailable and Petitioner's countable assets in the month of February 2019 were under \$2,000.

CONCLUSIONS OF LAW

- The value of the two room and board checks that were cut and mailed in February 2019 on Petitioner's behalf but that were not cashed until March 2019 may not be included when determining Petitioner's countable assets for the month of February 2019.
- Petitioner's countable assets for the month of February 2019 did not exceed \$2,000.

THEREFORE, it is

ORDERED

The matter is remanded to the agency with instructions to open her Family Care / Community Waivers benefits for the month of February 2019 and to send her written notice reflecting that eligibility. The agency shall comply with these instructions within ten days of the date of this decision.

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, 4822 Madison Yards Way, 5th Floor North, 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.

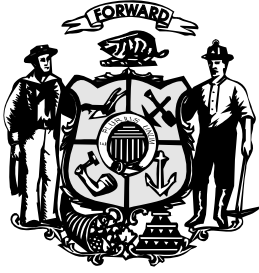
APPEAL TO COURT

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 14th day of June, 2019

\s _____
Teresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
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 June 14, 2019.

Rock Cty Human Services
Office of Family Care Expansion
Health Care Access and Accountability