



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MGE/143573

PRELIMINARY RECITALS

Pursuant to a petition filed August 30, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Chippewa County Department of Human Services in regard to Medical Assistance, a hearing was held on November 28, 2012, at Chippewa Falls, Wisconsin.

The issue for determination is when the petitioner's eligibility for medical assistance begins.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Kelly Goettl

Chippewa County Department of Human Services
711 N. Bridge Street
Chippewa Falls, WI 54729-1877

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Chippewa County.
2. The petitioner lives in an assisted living facility. She first applied for Medical Assistance-Waiver benefits on May 14, 2011. At that time, she and her husband had over \$240,000 in assets.

3. The petitioner reapplied for medical assistance on February 28, 2012. The county agency denied the application on April 25, 2012. That denial was overturned by *DHA Decision No. MRA/140930*.
4. *DHA Decision No. MRA/140930* ordered the agency to determine the petitioner's community spouse asset share as of May 13, 2011, and stated: "The petitioner shall file any paperwork necessary with the ADRC to seek MA-Waiver benefits. Any Waiver benefits provided shall be based upon the February 28, 2012, application date."
5. The petitioner first met with the ADRC on February 28, 2013. She was found eligible for the program as of March 14, 2013.

DISCUSSION

The petitioner has lived in an assisted living facility since at least May of 2011. She first applied for medical assistance that month, but the county agency rejected her application because she and her husband had over \$240,000 in countable assets, which is well above the program's \$2,000 limit. Wis. Stat. § 49.47(4)(b).

To prevent a spouse living in the community from being impoverished, both Wisconsin and federal law allow the \$2,000 limit to be increased where one of the spouses is institutionalized. Wis. Stat. § 49.455. A person receiving medical assistance under one of the MA-Waiver programs is considered institutionalized. *Medicaid Eligibility Handbook*, § 27.4.1. and 42 U.S.C. § 13964-5. The amount of assets over \$2,000 that the couple can possess and still be found eligible for medical assistance is referred to as the "community spouse asset share." *Medicaid Eligibility Handbook*, § 18.2.2. For an MA-Waiver applicant, this amount varies with the total assets the couple holds at the time of the original application. Couples with up to \$100,000 are allowed to retain \$50,000, those with between \$100,000 and \$227,280 are allowed to retain half of their assets, and those with over \$227,280 are allowed to retain \$113,640. *Medicaid Eligibility Handbook*, § 18.4.3. In addition, the \$2,000 limit allowed under Wis. Stat. § 49.47(4)(b) is added to this amount.

The petitioner reapplied on February 28, 2012, seeking MA-Waiver benefits. By then, she and her husband had only about \$100,000 in assets. She asked that she receive spousal impoverishment protection with her assets determined as of her May 2011 application date. The agency denied this request because it stated that she did not specifically ask for Waiver benefits when she first applied and she had not sought the benefits through the Aging and Disability Resources Center (ADRC). She appealed this denial and *Decision No. MRA/140930* ordered the agency to determine her community spouse asset share as of May 13, 2011.

The decision allowed the petitioner to file a new appeal if disagreed with the agency's decision. Her eligibility was delayed while the agency sought verification of her assets and waited for her to contact the ADRC. The agency eventually agreed that she had verified her assets but did not find her eligible because she had not contacted the ADRC. Her attorney contends that he was never notified of this requirement and contends that it does not exist. Nevertheless, on February 28, 2013, she did go to the ADRC. The agency contends that her eligibility should not begin until March 14, 2013, when the ADRC enrolled her. Her attorney contends that it should begin on February 1, 2012, when her and her husband's assets fell below the spousal impoverishment limit.

The petitioner was notified that she must go to the ADRC. Her failure to go there earlier was one of the reasons the county agency denied her February 2012 application. In addition, on March 28, 2012, the agency notified her corporate guardian that it had no record of her contacting the ADRC for Waiver benefits. Finally, *DHA Decision No. MRA/140930* stated: "The petitioner shall file any paperwork necessary with the ADRC to seek MA-Waiver benefits." On the other hand, while waiting for this matter

to be resolved, the petitioner filed a new application for medical assistance on August 1, 2012. The agency denied that application because her income and assets exceeded the program's limit and she had not properly verified her financial information; it said nothing about failing to go to the ADRC.

Ultimately, this is the same matter as was ruled on in *DHA Decision No. MRA/140930*: that matter remanded the denial of the February 2012 application to the agency for further consideration. Because that application is still the one under consideration, that decision's language, which has not been appealed or reversed, applies to the current situation. That decision specifically held: "Any Waiver benefits provided shall be based upon the February 28, 2012, application date." Under that decision's language, the agency properly delayed determining whether the petitioner was eligible for benefits until she went to the ADRC. However, once she was found eligible, the decision requires that her eligibility must be made retroactive based upon her application date. It is uncontested that her assets were within the spousal impoverishment limit that month, so her eligibility began on February 1, 2012.

CONCLUSIONS OF LAW

The petitioner met all eligibility requirement for medical assistance as of February 1, 2012.

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 find the petitioner eligible for medical assistance retroactive to February 1, 2012.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

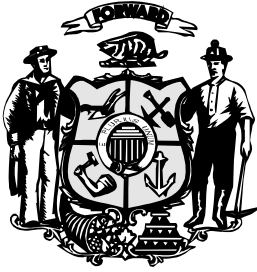
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 13th day of March, 2013

\sMichael 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 March 13, 2013.

Chippewa County Department of Human Services
Division of Health Care Access and Accountability
peter@eclawyers.com