



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

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/148648

PRELIMINARY RECITALS

Pursuant to a petition filed June 24, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Polk County Department of Social Services in regard to Medical Assistance, a hearing was held on August 28, 2013, at Balsam Lake, Wisconsin. Hearings scheduled for June 26, 2013, and July 23, 2013, were rescheduled at the petitioner’s request. The petitioner’s May 21, 2013, request for a rehearing was granted on June 4, 2013, because the Division of Hearings and Appeals had incorrectly interpreted a May 8, 2013, letter requesting a postponement as a withdrawal of a request for a rehearing and dismissed the matter.

The issue for determination is whether the petitioner’s assets exceeded the medical assistance asset limit in January 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Peter Grosskopf
1324 West Clairemont Ave Suite 10
Eau Claire, WI 54701

Respondent:

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

By: Nancy Randall

Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Polk County.
2. The county agency denied the petitioner's request for institutional medical assistance benefits for January 2013 because it determined that granting her eligibility retroactive to that date would put her assets over the program's limit for that month.
3. The petitioner's assets fell below \$2,000 for January 2013 after she paid her nursing home bill. They remained below the limit throughout the rest of that month.
4. The petitioner has not disposed of any assets for less than their fair market value.

DISCUSSION

A person cannot receive medical assistance if her actually available assets exceed \$2,000. Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. § 49.47(4)(b)3g.e. 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). 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. Generally, a person cannot reach this limit by divesting assets, which usually occurs if she or someone acting on her behalf "disposes of resources at less than fair market value" within five years of later of when they were institutionalized and applied for medical assistance. Wis. Adm. Code, § DHS 103.065(4)(a); Wis. Stat. § 49.453(1)(f).

The petitioner applied for medical assistance on February 1, 2013, seeking institutional medical assistance retroactive to January 1, 2013. The county agency concedes that her assets were less than \$2,000 at the end of that month. Nevertheless, it contends that she is ineligible. Its reasoning is that she brought her assets below the limit by paying her nursing home bill. If she had been found eligible in January, she would not have had to pay this bill, which would have left her assets above \$2,000.

There is no legal basis for the agency's position. She has not divested any assets, and paying a nursing home bill is always an acceptable way to reduce one's assets. The agency's argument that any refund should be attributed to January 2013 is consistent with the arguments of petitioners who contend that their actual assets should be reduced to account for unpaid debts. Those arguments always fail because countable assets are based upon the amount of resources one actually has at any given time. When the petitioner receives a refund after being found eligible, her assets may exceed \$2,000, but this will occur in the month she receives the refund and not in January 2013. Her attorney agreed on the record that any refund would be a change of financial circumstances that his client must report. He also agreed that to continue to be eligible after receiving a refund she must establish that she legitimately brought her assets below \$2,000. But her future eligibility is not an issue for this hearing. The only issue for this hearing is whether she is eligible retroactive to January 2013. She is.

CONCLUSIONS OF LAW

The petitioner was eligible for institutional medical assistance as of January 1, 2013, because her actual countable assets were less than \$2,000 at the end of that month.

THEREFORE, it is

ORDERED

That this matter be remanded to the county agency with instructions that within 10 days of the date of this decision it grant her institutional medical assistance retroactive to January 1, 2013.

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

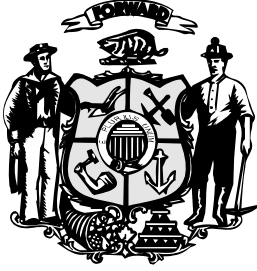
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 4th day of September, 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 September 4, 2013.

Polk County Department of Social Services
Division of Health Care Access and Accountability
peter@eclawyers.com