



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact
[Redacted]

DECISION

MGE/160646

PRELIMINARY RECITALS

Pursuant to a petition filed September 15, 2014, under Wis. Stat., §49.45(5), to review a decision by Milwaukee Enrollment Services to deny Medical Assistance (MA), a hearing was held on December 23, 2014, by telephone. Hearings set for October 14 and November 25, 2014 were rescheduled at the petitioner's request.

The issue for determination is whether petitioner's assets were below the MA limit in June, 2014.

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact
[Redacted]

Respondent:

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

By: [Redacted]
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. An application was filed for nursing home MA for petitioner in June, 2014. The agency eventually determined that petitioner was asset eligible for MA beginning in July, 2014, when life insurance cash values were changed from petitioner's name to the trust. Petitioner then filed this appeal seeking coverage for June, 2014.

3. Petitioner's representatives set up a WisPact Trust for her in February, 2014. All assets and the right to receive a pension payment were transferred to the trust by the end of May, 2014. However, as of the date of the hearing petitioner had not received a determination that she was disabled in June, 2014 (a presumptive disability determination was made in December, 2014).

DISCUSSION

A person cannot receive institutional medical assistance if her assets exceed \$2,000. Wis. Admin. Code, §DHS 103.06(1)(a); Wis. Stat., §49.47(4). When determining eligibility, only those assets "actually available" are considered. Wis. Admin. Code, §DHS 103.06(1)(a). 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, §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.

A WisPact Trust allows disabled persons to place certain assets in a pooled trust. Because funds in these trusts are exempt from the medical assistance asset limit, the *Medicaid Eligibility Handbook*, §16.6.6 , instructs workers to "[d]isregard pooled trusts for disabled persons managed by ... WisPACT Trust I."

The first issue is when the life insurance proceeds were placed into the trust. Evidence provided at the hearing show that the life insurance proceeds were transferred into the trust on May 21, 2014. The reason for the confusion over the transfer date is that petitioner's representative did not inform the insurance company about the transfer until July. In July she applied to the insurance company to change the owner from petitioner to the trust. However, since the actual transfer between petitioner and the trust took place in May, I conclude that the life insurance was placed into the trust then, and thus became unavailable to petitioner in May. Even though petitioner's name remained on the policy until July, by law the trust owned the policy beginning in May.

There remains a second issue, however, in that petitioner was not disabled in June, 2014. Not until she was found to be presumptively disabled in December could the impact of the trust be effectuated. Presumptive disability cannot be backdated. *Handbook*, App. 5.9.5. The trust, in other words, does not effectively shield assets from the MA limit until December, 2014 because petitioner was not disabled.

Thus my order will be that petitioner was asset eligible for MA in June, 2014 if and only if she is found to be disabled retroactive to that month.

A third issue was raised during the hearing concerning petitioner's monthly pension. That too was placed in the trust on May 21 but was counted as income for cost of care purposes during a period when petitioner was mistakenly made eligible for MA. Again, that income would be attributed to petitioner unless she is found to be disabled. If petitioner is found to be disabled, her cost of care should be adjusted to remove that pension income. If petitioner is not found to be disabled, the pension is counted correctly.

CONCLUSIONS OF LAW

1. Petitioner transferred her life insurance proceeds to her WisPact Trust in May, 2014, not July as originally determined.
2. Backdated MA and cost of care determinations cannot be made unless petitioner is found to be disabled retroactive to at least June 1, 2014.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to remove life insurance assets and pension income as being available to petitioner effective May 21, 2014, if and only if petitioner is determined to be disabled retroactive to June 1, 2014 (the date that MA eligibility is requested to begin) or earlier. The agency shall take the action regarding the assets and income within 10 days of this decision, with the final eligibility determination to be made after the Disability Determination Bureau makes a decision on petitioner's disability status.

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, Madison, Wisconsin 53703, **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 9th day of January, 2015

\sBrian C. Schneider
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 January 9, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability