



FH
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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████
Menominee, MI 49858-9673

DECISION
Case #: MGE - ██████████

PRELIMINARY RECITALS

Pursuant to a petition filed on December 11, 2017, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Marinette County Department of Human Services regarding Medical Assistance (MA), a hearing was held on January 17, 2018, by telephone.

The issue for determination is whether the agency correctly denied petitioner's application for long-term MA based on her owning property out of the state of Wisconsin.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████
Menominee, MI 49858-9673

Petitioner's Representative:

Attorney Jonathan P. Barstow
Barstow Elder Law Center SC
2149 Velp Ave Suite 205
Green Bay, WI 54303

Respondent:

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

By: L. Pickl

Marinette County Department of Human Services
Wisconsin Job Center Suite B
1605 University Drive
Marinette, WI 54143

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED] is a resident of Marinette County, WI, residing in Luther Home Nursing Home.
2. Petitioner owns a home in Menominee County, MI to which she intends to return when she completes her stay at a long-term care nursing home.
3. Petitioner applied for Medicaid in September 2017.
4. The agency counted the home in MI as an available asset and denied Medicaid.
5. Petitioner appealed.
6. Petitioner submitted as an exhibit (see #2) a statement asserting her intent to return to her home after her stay in the nursing home.

DISCUSSION

The Petitioner filed an appeal, because she disagrees with the agency's denial of her September 2017 Medicaid application. It is the agency's position that it correctly denied the Petitioner's application for medical assistance, because it did not receive timely verification of any circumstance that would exempt her Michigan home as an asset.

The Medicaid Eligibility Handbook states the following with regard to applicants' homes:

16.8.1.3 Exempt Home Property

Although home property is an exempt asset under the conditions described in this subsection, there are limits on divesting home property (see Section 17.2.3.1 Homestead Property).

Non-Institutionalized Person. For a person who is not residing in an institution, the home is exempt as long as the person resides in it, or intends to return to it. There is no time limit for an intended return. The home remains exempt even if the person rents out part of it while he or she continues to reside there.

Institutionalized Person. When a person resides in an institution, the home is exempt if one of the following conditions is met:

1. *His or her spouse or dependent relative resides in the home. The dependency of the relative may be of any kind, such as financial or medical. The relative may be father, mother, daughter, son, grandson, granddaughter, in-laws, stepmother, stepfather, stepson, stepdaughter, grandmother, grandfather, aunt, uncle, sister, brother, stepbrother, stepsister, half-sister, half-brother, niece, nephew, or cousin.*
2. *The institutionalized person expresses his or her intent to return to the home. If he or she is able to form an intent but unable to express it, determine his or her intent through other available evidence. Other evidence includes:*
 - a. *His or her written statements.*

- b. His or her oral statements made before incapacitation. Accept reports of these statements made by family members.*
- c. Accept reports of his or her intent made by an authorized representative . If there is no evidence he or she disagrees with the statement, accept the authorized representative's statement.*

If he or she appears unable to form an intent but has not been judged incompetent by a court, accept a family member's statement as evidence of his or her intent. If he or she has been judged incompetent, accept the intent statement of his or her guardian. Use the guardian's intent statement even if it differs from the member's. If neither condition #1 nor #2 is met, the property is no longer the principal residence and becomes non-home property.

Petitioner meets the requirements of *Medicaid Eligibility Handbook* Section 6.1. The Petitioner has provided a written statement indicating her intent to return home. *See Exhibit 2*. Nothing in the rules of the program indicate that an exempt home must exist in the state of Wisconsin. As such, her home was/is not a countable asset.

CONCLUSIONS OF LAW

The agency did not correctly deny the Petitioner's September 25, 2017 application for benefits.

THEREFORE, it is ORDERED

That within 10 days of this decision, the agency re-determine the Petitioner's eligibility for Medicaid under the 9/25/17 application excluding her home as an asset.

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

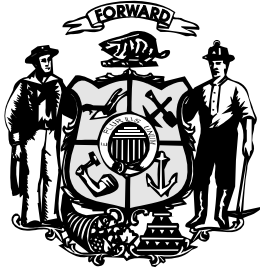
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 14th day of March, 2018

\s_____

John P. Tedesco
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 March 14, 2018.

Marinette County Department of Human Services
Division of Health Care Access and Accountability
Attorney Jonathan Barstow