



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: MGE - 200475

PRELIMINARY RECITALS

Pursuant to a petition filed on November 13, 2020, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dodge County Human Services regarding Medical Assistance (MA), a hearing was held on December 2, 2020, by telephone. Post-hearing, the record was held open for a period of 10 days to allow petitioner to submit additional information.

The issue for determination is whether the respondent correctly determined petitioner’s divestment period and eligibility start date.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

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

Respondent:

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

By: [REDACTED]
Dodge County Human Services
199 Cty Rd DF
Juneau, WI 53039

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County.\
2. Petitioner applied for Institutional MA eligibility on or about May 1, 2020. He was determined eligible for MA as of May 1, 2020, and a divestment penalty period was established in the amount of 5.06 months.
3. Petitioner purchased an annuity in consideration of the MA divestment period from May 1, 2020 through September 22, 2020.
4. The annuity, identified as the “[REDACTED] annuity” was issued for a six-month period starting May 1, 2020. The final payment from the annuity was received in October of 2020.
5. Petitioner’s institutional provider, [REDACTED], informed petitioner Power of Attorney that petitioner did not owe anything for the month of August. It subsequently corrected this error and charged petitioner \$9,098.50 for August, 2020, \$8,805.00 for September, 2020, and \$4,109.00 for the first 14 days of October, 2020.
6. The respondent identified September 22, 2020 as the conclusion of his divestment period, but due to the inaccurate information received from [REDACTED], the annuity payments continued into October, 2020.
7. The respondent commenced petitioner’s eligibility on November 1, 2020, citing his receipt of unearned income from the [REDACTED] annuity.
8. As of the month of 10/2020, the respondent determined that petitioner had income of \$6,833.37 from the annuity and \$1,525.70 that he received from Social Security, which exceeded the categorically needy income limit of \$2,349.00.
9. On November 13, 2020, petitioner filed a request for fair hearing asserting that his eligibility commencement should have been October 14, 2020.

DISCUSSION

The issue presented involves a determination of countable unearned income, which is affected in the present matter by planning for accommodation of a divestment period. Complicating matters is the assertion by the petitioner that his institutional provider, [REDACTED], provided incorrect information resulting in continuation of an annuity that extended his receipt of unearned income. The respondent contends that the petitioner’s receipt of the [REDACTED] annuity payments in October resulted in a determination that petitioner’s MA eligibility was not established until an effective date of November 1, 2020, while petitioner contends that this error was out of his hands and resulted from incorrect information provided by [REDACTED] and/or the respondent.

MA policy directs that unearned income is income that a *member* receives from sources other than employment. Unless it is disregarded income (see Section 15.3 Exempt and Disregarded Income) or an income deduction (see Section 15.7 Income Deductions), count gross unearned income in a person’s income total. MA Handbook, § 15.4. As the respondent correctly asserts, unearned income from annuities is not identified as exempt or disregarded income, nor income deductions. See, MA Handbook, §§ 15.3 and 15.7, respectively.

Medicaid eligibility begins the first day of the month in which the valid application is submitted and all program requirements are met with the following exceptions. Those begin dates are the date a valid application is submitted, all program requirements are met, and:

1. Deductible – The date the deductible was met.
2. Inmates – The date the *member* is no longer an inmate of a *public institution*.
3. Person Adds – The date the person moved into the household.
4. Recent Moves – The date the member moved to Wisconsin.

Exception: The begin date for an SSI recipient who moves to Wisconsin is the 1st of the month of the move.

Example 1: SSI recipient Mr. Nebble moves to Wisconsin from Vermont in April 2009. He becomes eligible 04-01-09 in Wisconsin.

5. Home and Community-Based Waivers – The program start date provided by the care manager.
6. Family Care and PACE or Partnership – The date the individual is enrolled in the MCO.
7. Institutionalized – His or her entry into the nursing home or hospital.
8. QMB – The first of the month following the eligibility confirmation.
9. SeniorCare – The first of the month following the month in which all program requirements have been met.

MA Handbook, § 2.8.1.

The respondent argues that petitioner was deemed eligible as of November 1, 2020 because that was the first day of the month in which all program requirements were met. Petitioner counters that he carefully planned for his MA eligibility, and purchased an MA-compliant annuity in furtherance of that goal. Despite any error on his part, his eligibility was delayed due to incorrect information provided by [REDACTED]. The petitioner also claims that the respondent is responsible as it, in conjunction with [REDACTED], did not correctly apply the divestment period.

The record before me fails to establish petitioner’s claim that the respondent failed to apply a correct divestment period. Respondent’s representative sent an email regarding the divestment period to petitioner’s attorney on June 25, 2020 stating, “... Start date 5/1/2020 and end date 9/22/2020.” In a subsequent email dated October 22, 2020, petitioner’s attorney wrote, “ ...Could you please provide me with the date when [REDACTED] [REDACTED]’s divestment period will end? We believe it to be October 14, 2020, but want to be certain.” The respondent’s representative replied, “...[REDACTED]’s divestment actually ended as of 9/22/2020, BUT due to his additional UI from the annuity he did not qualify until 11/1/2020. ...”

MA policy does not list any exception applicable to petitioner that would allow for petitioner’s eligibility to commence mid-month. As such, the petitioner has not established any error by the respondent in commencing petitioner’s eligibility on November 1, 2020, which is the first of the month after petitioner met all program requirements.

CONCLUSIONS OF LAW

The respondent correctly determined that petitioner was eligible for MA benefits effective November 1, 2020.

THEREFORE, it is

ORDERED

That petitioner’s appeal is hereby dismissed.

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.

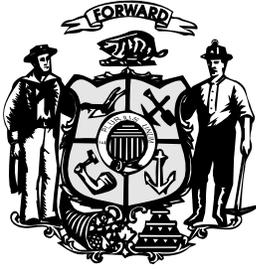
APPEAL TO COURT

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 8th day of February, 2021

\s _____
Peter McCombs
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 February 8, 2021.

Dodge County Human Services
Division of Health Care Access and Accountability

