

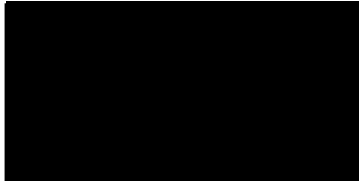


State of Wisconsin DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
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April 19, 2021



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

RE:

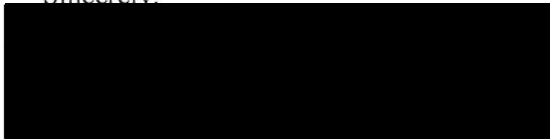


Case No. MGE - 199939

Dear Parties:

Enclosed is a copy of the Final Decision in the above-referenced matter.

Sincerely,



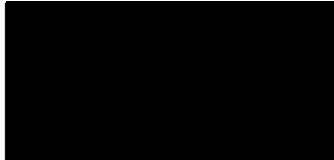
Legal Associate

c: Great Rivers Consortium - email
Division of Health Care Access and Accountability - email



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

In the Matter of



DECISION
Case #: MGE - 199939

The attached proposed decision of the hearing examiner dated February 2, 2021, is modified as follows and, as such, is hereby adopted as the final order of the Department.

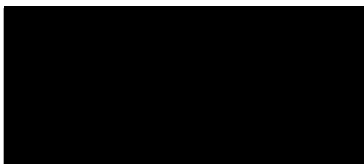
PRELIMINARY RECITALS

Pursuant to a petition filed September 18, 2020, under Wis. Stat., §49.45(5), to review a decision by the Dunn County Dept. of Health Services to deny Medical Assistance (MA), a hearing was held on January 27, 2021, by telephone. Hearings set for November 4, December 7, 2020, and January 4, 2021 were rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly counted property as an asset.


PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: 
Dunn County Dept. of Health Services
PO Box 470
Menomonie, WI 54751

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES [REDACTED]) is a resident of Polk County. Dunn County DSS handles Polk County cases as part of the Great Rivers Economic Consortium.
2. An application for nursing home MA was filed on petitioner's behalf on May 1, 2020. It was reported that petitioner's only asset was her home, and that she would be unable to return to live there. Since there was no evidence the home was listed for sale, the application was denied by a letter dated July 17, 2020 because assets were over the limit.
3. Another application was filed on July 14, 2020. A request for verification was sent asking for proof that the home was listed for sale, and on August 14, 2020 the agency denied the application because the proof of listing was not received.
4. Petitioner's home consisted of a mobile home and the land where it stood. The land was assessed at \$7,800 and the improvement at \$17,900.
5. Petitioner appealed the denial on September 18, 2020. The appeal noted that three realtors refused to list the property for sale because of its condition. Two letters/notes from realtors were provided in the hearing exhibits. Realtor [REDACTED] opined that the property had no value and that it would take a company specializing in toxic waste removal to clean it. Realtor [REDACTED] opined that it would have to be cleaned by a Hazmat suit crew and that it could not be listed because nobody would go on the property until it was cleaned.
6. The economic support agency removed the value of the improvement as an asset, but retained the \$7,800 land value as an available asset against the MA asset limit. Thus petitioner remained ineligible for MA because the land value was over \$2,000 and the property was not listed for sale.

DISCUSSION

The MA asset limit for an individual is \$2,000. Wis. Stat., §49.47(4)(b)3g. If assets are above that limit, the person is not eligible for MA. The statute does not allow for outstanding debts to be deducted from assets, nor does it provide any exceptions for unusual situations.

Wis. Admin. Code, §DHS 103.06(5)(c) provides:

If the total value of non-homestead property and non-exempt assets exceeds the asset limit, the person who owns the non-homestead property shall list the property for sale with a licensed realtor at a price which the realtor certifies as appropriate. If the property is listed for sale, it may not be counted as an asset. When the property is sold, the net proceeds shall be counted as an asset.

See also MA Handbook, §16.2.2. The Handbook section also provides general availability policies:

Consider an asset as unavailable if **either**:

1. The member lacks the ability to provide legal access to the assets, and
2. No one else can access the assets, and
3. A process has been started to get legal access to the assets.

While that provision specifically applies to situations not involving real property, I include it to show that the Department has an extremely strict view on when an asset can be considered unavailable. It describes situations where the person does not have legal access to the asset. Petitioner has legal access to sell her property.

The situation here is extremely tricky. It is true that the property has not been listed for sale, but there is evidence that at least two real estate agents refuse to list it due to its hazardous condition. It is such a rare situation. The property is not listed for sale because realtors refuse to list it. In the midst of a pandemic it is unknown whether clean-up of the property can be arranged and how expensive it would be. Petitioner's daughter lives in Chicago, making it even more difficult to make arrangements. In the meantime petitioner's nursing home has been providing care for upwards to a year with no compensation. The Department's Secretary has the discretion to grant eligibility in this unusual case.

CONCLUSIONS OF LAW

The Secretary determines Petitioner is eligible for MA despite owning unsaleable non-exempt real property valued higher than \$2,000 that has not been listed for sale.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency to re-determine petitioner's eligibility, based on the date of her first application, removing the property as a countable asset. The agency shall also issue a new notice of decision regarding this redetermination. These actions shall be taken within 10 days of this Decision.

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, Madison, WI 53705-9100 **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, WI, 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 request (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 19 day
of April, 2021.



Karen E. Timberlake, Secretary-Designee
Department of Health Services



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



PROPOSED DECISION
Case #: MGE - 199939

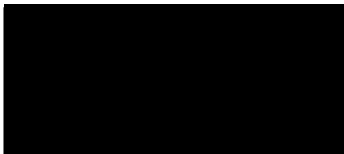
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ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES ) is a resident of Polk County. Dunn County DSS handles Polk County cases as part of the Great Rivers Economic Consortium.

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6. The economic support agency removed the value of the improvement as an asset, but retained the \$7,800 land value as an available asset against the MA asset limit. Thus petitioner remained ineligible for MA because the land value was over \$2,000 and the property was not listed for sale.

DISCUSSION

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While that provision specifically applies to situations not involving real property, I include it to show that the Department has an extremely strict view on when an asset can be considered unavailable. It describes situations where the person does not have legal access to the asset. Petitioner has legal access to sell her property.

The situation here is extremely tricky. It is true that the property has not been listed for sale, but there is evidence that at least two real estate agents refuse to list it due to its hazardous condition. In the end, I find that as an Administrative Law Judge who must follow the law and Department policy, I must

conclude that the agency action was correct. The simple fact is that petitioner owns non-exempt real property that has not been listed for sale, and thus its value puts petitioner over the MA asset limit.

Nevertheless, I am sending this decision proposed because it is such a rare situation. The property is not listed for sale because realtors refuse to list it. In the midst of a pandemic it is unknown whether clean-up of the property can be arranged and how expensive it would be. Petitioner's daughter lives in Chicago, making it even more difficult to make arrangements. In the meantime petitioner's nursing home has been providing care for upwards to a year with no compensation. While I cannot make petitioner eligible, the Department's Secretary (or her designee) could potentially use her discretion to make an eligibility ruling in this unusual case.

CONCLUSIONS OF LAW

Petitioner is ineligible for MA because she owns non-exempt real property valued higher than \$2,000 that has not been listed for sale.

THEREFORE, it is ORDERED

That the petition for review is hereby dismissed.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH. If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as 'PARTIES IN INTEREST.'

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison,
Wisconsin, this 2 day of February, 2021



Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals