



FH
[REDACTED]

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

In the Matter of

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

DECISION
Case #: MGE - 196806

PRELIMINARY RECITALS

Pursuant to a petition filed November 16, 2019, under Wis. Stat., §49.45(5), to review a decision by the Marathon County Dept. of Social Services regarding Medical Assistance (MA), a hearing was held on January 8, 2020, by telephone.

During the hearing petitioner's representative referred to a submission from [REDACTED] that I did not have in the file. After the hearing I located the submission in this office and added it to the file.

The issue for determination is whether petitioner was over the asset limit in August, 2019.

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: [REDACTED]
Marathon County Dept. of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County. Marathon County DSS is listed as the primary agency as part of the Central Consortium.
2. An application for nursing home MA was filed on petitioner's behalf on August 26, 2019. Because petitioner's husband lives in the community the asset limit for petitioner's eligibility was set at \$52,000.
3. After receiving verification of assets, the county worker determined that assets totaled \$58,249 at the end of August, 2019. Assets were reduced below the limit in September.
4. By a notice dated October 10, 2019 the agency informed petitioner that she was eligible effective September 1, 2019.

DISCUSSION

Petitioner's filed this appeal to contest the denial of MA for August. The county worker used the best evidence available, a bank statement for the period August 15 through September 16, 2019, that showed a checking account balance of \$18,005 as of August 15 and \$10,744 on September 16. The statement did not break down daily balances, so it was unclear what the balance was on August 31.

Petitioner presented at the hearing the actual breakdown of daily balances. After a check was written on August 20, the account balance was \$9,547.60. It stayed at that level through the end of August. It increased again after August 31 after social security and annuity deposits. The point is that, as of August 31, the account was not \$18,000, but \$9,500. That \$8,500 difference would bring petitioner's assets below the \$52,000 limit in August, making her eligible that month. A savings account also was overvalued, but the checking account alone is sufficient to reduce the value below \$52,000.

The federal Medicaid Catastrophic Coverage Act of 1988 (MCAA) included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat., §49.455(1).

When initially determining whether an institutionalized spouse is eligible for MA, county agencies are required to review the combined assets of the institutionalized spouse and the community spouse. MA Handbook, Appendix 18.4.1. All available assets owned by the couple are to be considered. Homestead property, one vehicle, and anything set aside for burial are exempt from the determination. The couple's total non-exempt assets then are compared to an "asset allowance" to determine eligibility.

The asset allowance for this couple was \$50,000. MA Handbook, App. 18.4.3, which is based upon Wis. Stat., §49.455(6)(b). \$2,000 (the MA asset limit for the institutionalized individual) is then added to the asset allowance to determine the asset limit under spousal impoverishment policy. If the couple's assets are at or below the determined asset limit, the institutionalized spouse is eligible for MA. If the assets exceed the above amount, as a general rule the spouse is not MA eligible. The evidence shows that petitioner was eligible in August, 2019.

CONCLUSIONS OF LAW

Petitioner's assets were below the MA limit in August, 2019.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to grant MA eligibility for petitioner for the month of August, 2019 based upon countable assets being below the limit, if petitioner met all other eligibility criteria for that month. The county shall do so 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, 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.

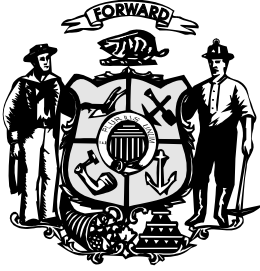
APPEAL TO COURT

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 9th day of January, 2020

\s _____
Brian 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, 2020.

Marathon County Department of Social Services
Division of Health Care Access and Accountability