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[REDACTED]

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

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In the Matter of

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

**DECISION**  
Case #: MAP - 196477

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on October 28, 2019, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Eau Claire County Department of Human Services regarding Medical Assistance (MA), a hearing was held on December 3, 2019, by telephone.

The issue for determination is whether the petitioner's assets exceed the Medical Assistance Purchase Plan's \$15,000 limit.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

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

By: [REDACTED] [REDACTED]  
Eau Claire County Department of Human Services  
721 Oxford Avenue  
PO Box 840  
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:  
Michael D. O'Brien  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Polk County.
2. The department notified the petitioner on September 24, 2019, that his Medical Assistance Purchase Plan benefits would end as of November 1, 2019, because it had determined that he had \$32,097.68 in assets.
3. The petitioner and his wife quitclaimed property valued at \$31,900 to their children on August 28, 2015.
4. The petitioner has assets totaling \$13,673.59 in his name when his most expensive vehicle is exempted.

### DISCUSSION

The Medical Assistance Purchase Plan (MAPP) provides medical assistance to disabled persons who wish to work. Participants in the program cannot have assets that exceed \$15,000. Wis. Stat. § 49.472(3)(b). The department contends that the petitioner is ineligible because he failed to disclose all of his assets.

Failing to disclose all of one's assets would not make one ineligible for benefits unless the undisclosed assets caused the total assets to exceed \$15,000. Because the department is trying to change the present state of affairs by making the petitioner no longer eligible, it is the moving party. As the moving party, it has the burden of proof. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The Department of Health Services acknowledged the principle laid down in *Hanson* in *Final Decision ATI-40/87198*, where Deputy Secretary Richard Lorang ruled on August 17, 1995, that in any fair hearing concerning the propriety of an agency action, the agency has the burden of proof to establish that the action it took was proper given the facts of the case. All of this means that the burden is on the department to prove that the petitioner's assets exceed \$15,000.

The department's September 24, 2019, notice indicating that the petitioner's MAPP eligibility would end on November 1, 2019, stated that the petitioner's assets were \$32,097.68. After the hearing, it submitted a list it indicated reflected the assets as of December 3, 2019. It did not provide me a total of these assets, but there is no need for me to calculate all of them because most are not countable when determining the petitioner's eligibility for MAPP.

First, Wis. Stat. § 49.472(3)(b) refers to the "individual's" assets rather than the family's assets in conjunction with \$15,000 limit. This is clearly distinguishable from the law's section on income, which refers to the "individual's family's net income." Wis. Stat. § 49.472(3)(a). Thus, assets titled in the petitioner's wife's name do not count toward the limit. It is unclear why the worker was unaware of this requirement because the department's policy manual explicitly states: "Only count the assets of the MAPP applicant for the MAPP asset eligibility test." *Medical Eligibility Handbook*, § 26.4.1. Nevertheless, its submission indicated that the petitioner failed to disclose assets titled in his wife's name.

Second, medical assistance rules exempt from the asset limit a person's "home and the land used and operated in connection therewith ... if the home ... is used as the person's place of abode." Wis. Stat. § 49.47(4)(b)1. The petitioner's homestead property, valued at \$112,000, does not count toward his assets limit. Although the department listed these assets in its submission, it does not appear that it ever counted them when determining the petitioner's eligibility.

Third, the department attributed to the petitioner a parcel of land he and his wife quitclaimed to their children and August 28, 2015. The department contends that it remains a countable asset for the petitioner because he has not recorded the deed with the county's register of deeds. Its own policy manual contradicts its position: "If the Medicaid member has transferred real property such as a homestead, the official date of transfer is the date the Quit Claim Deed was signed and notarized. It is not the date the transfer was recorded with the county Register of Deeds." *Medical Eligibility Handbook*, § 17.2.2.1. The department may have overlooked this provision because it is the divestment section of the manual, but the provision reflects Wis. Stat. § 706.02, which lists the requirements for any transaction that affects any interest in land:

- (a) Identifies the parties; and
- (b) Identifies the land; and
- (c) Identifies the interest conveyed, and any material term, condition, reservation, exception or contingency upon which the interest is to arise, continue or be extinguished, limited or encumbered; and
- (d) Is signed by or on behalf of each of the grantors; and
- (e) Is signed by or on behalf of all parties, if a lease or contract to convey; and
- (f) Is signed, or joined in by separate conveyance, by or on behalf of each spouse, if the conveyance alienates any interest of a married person in a homestead under s. 706.01 (7) except conveyances between spouses, but on a purchase money mortgage pledging that property as security only the purchaser need sign the mortgage; and
- (g) Is delivered. Except under s. 706.09, a conveyance delivered upon a parol limitation or condition shall be subject thereto only if the issue arises in an action or proceeding commenced within 5 years following the date of such conditional delivery; however, when death or survival of a grantor is made such a limiting or conditioning circumstance, the conveyance shall be subject thereto only if the issue arises in an action or proceeding commenced within such 5-year period and commenced prior to such death.

The lack of a recording requirement does not render recording meaningless. Recording protects a person purchasing the property against claims made by another person who later buys the property in good faith from the same seller. Wis. Stat. § 706.08. Of course, fraudulently conveying property to a second person should not be a concern when a parent transfers property to his children. Regardless, the protection is for the one receiving the property and not the one transferring it.

Fourth, the department counted several vehicles as the petitioner's assets. The first vehicle is exempt as long as it is used for transportation. The exempt vehicle doesn't have to be an automobile; for example, it can be a motorcycle, boat, truck, or snowmobile, and that list isn't exclusive. Workers are instructed to assume that a vehicle is for transportation "[a]bsent evidence to the contrary." Other vehicles are exempt if they are used for some other purpose, such as self-support. *Medical Eligibility Handbook*, § 16.7.9., referring to *Medical Eligibility Handbook*, §§ 16.1 and 26.4. The petitioner's most valuable vehicle is listed on the asset list submitted after the hearing as a recreational vehicle. There is not enough testimony to indicate whether this is used for transportation. Because the department has the burden of proof in this matter, and *Medical Eligibility Handbook*, § 16.7.9. requires the department to assume that it is used for transportation, I find that it is used for that purpose.

The petitioner also contends that he uses some of his vehicles for the work he does to fulfill the MAPP work requirements. For the reasons discussed below, I will not consider that argument.

The total assets listed in the petitioner's name other than his house and the property given to his children is \$18,548.59. His most valuable vehicle is worth \$4,865. Subtracting this from his assets leaves him with \$13,673.59. Because this is within the MAPP program's \$15,000 asset limit, there is no need to determine whether some of his vehicles should be exempt because he uses them for work. I will remand this matter to the department to continue his edibility.

### **CONCLUSIONS OF LAW**

The petitioner remains eligible for MAPP because his countable assets are less than \$15,000.

**THEREFORE, it is ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it reinstate the petitioner into MAPP Plan retroactive to November 1, 2019.

### **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, 5<sup>th</sup> 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.

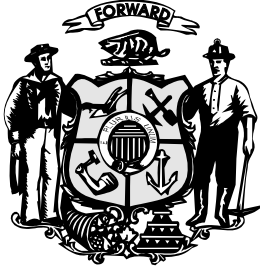
### **APPEAL TO COURT**

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 13th day of January, 2020

\s \_\_\_\_\_  
Michael D. O'Brien  
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 13, 2020.

Eau Claire County Department of Human Services  
Division of Health Care Access and Accountability