



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

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In the Matter of

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**DECISION**  
Case #: MGE - 196927

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on November 25, 2019, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Walworth County Department of Human Services regarding Medical Assistance (MA), a hearing was held on January 15, 2020, by telephone.

The issue for determination is whether the agency correctly denied petitioner’s application for MA due to failing to verify assets.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**

[Redacted]  
[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], ES Lead  
Walworth County Department of Human Services  
W4051 County Rd NN  
Elkhorn, WI 53121-1006

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County.
2. Petitioner applied for MA on August 30, 2019 requesting a two month backdate. It listed [REDACTED] as petitioner's authorized representative (AR).
3. On September 4, 2019 a request for verification was sent to the petitioner's AR requesting verification of assets and income, with a due date of September 30, 2019.
4. On September 13, 2019 petitioner filed another application for MA requesting a three month backdate. It listed [REDACTED] as petitioner's authorized representative
5. On September 16, 2019 the agency issued a request for verification of assets and income to petitioner's AR, with a due date of September 30, 2019.
6. On September 16, 2019 the agency sent a manual request for verification to the petitioner directly requesting a litany of verifications with a due date of September 30, 2019.
7. On September 27, 2019 the petitioner's AR submitted verifications in response to the 9/4/19 and 9/16/19 requests for same.
8. On September 30, 2019 the agency sent a manual request for verification to the petitioner directly requesting a litany of verifications with a due date of October 10, 2019.
9. On September 30, 2019 the agency issued a notice to petitioner's AR that petitioner's application was pending.
10. On October 1, 2019 the agency issued a notice to petitioner's AR that the due date to complete the application was extended to October 10, 2019.
11. On October 1, 2019 the agency the agency issued a request for verification of assets and income received from trust funds to petitioner's AR, with a due date of October 10, 2019.
12. On October 10, 2019 the petitioner's AR submitted verifications in response to the 9/30/19 and 10/1/19 requests for same.
13. On October 11, 2019 the agency issued a notice to petitioner that his application was denied due to failing to verify.
14. After the notice of denial was issued, the agency continued requesting verifications and petitioner's AR provided information in response. For example, on November 4, 2019 the petitioner submitted verification of multiple assets and a statement from the trustee regarding petitioner receiving no income from trust funds.
15. Petitioner has been income and asset eligible for MA since June 2019.

## DISCUSSION

Medicaid is a state/federal program that provides health coverage for Wisconsin residents that are elderly, blind, or disabled (EBD). Medicaid is also known as Medical Assistance, MA, and Title 19. *Medicaid Eligibility Handbook (MEH)*, §1.1.1, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. As part of the MA eligibility determination, the agency is required to verify income and certain assets owned by the petitioner. *MEH*, §15.1, 16.1. One of those assets that must be verified is a non-burial trust. See *MEH*, §§16.6. Therefore, the agency properly requested verification of the petitioner's trust when it became known to the agency.

The agency held fast to the notice of denial for failing to verify, even though the agency appeared to consider the application still open after the denial by continuing to request verifications. There appeared no dispute that the trust at issue was a trust established with the resources of a third party and that it was a discretionary trust in that the trustee had sole discretion in determining whether or how much to pay the beneficiaries (petitioner and his spouse) any trust income or principal of the trust. See *MEH*, §16.6.4.1. The agency's position was that it was trying to determine if petitioner divested by continuing to request verifications. Basically, the agency's position was that the petitioner provided verification by the due date of October 10, but it was not adequate verification because the petitioner's AR provided statements about no income being distributed to the petitioner from the trust. The agency found the *AR's* statements questionable or inadequate. In the following month, the agency received the *trustee's* statement that no income was being distributed to the petitioner from the trust and determined that adequate verification.

The petitioner has primary responsibility for verifying information requested by the agency. *MEH*, §20.1.4. The *MEH* directs the agency as follows about verifications and applications:

The time period for processing an application for Medicaid is 30 days. Advise the applicant of the specific verifications required within the 30-day processing time. **Give the applicant a minimum of 10 calendar days to provide any necessary verification.**

*MEH*, §20.7.1.1 (emphasis added).

Notify the member of a processing delay when:

- Verification is needed.
- He or she has the power to produce the verification.
- The minimum time period allowed for producing the verification has not passed.

CARES provides a verification checklist to notify the member of the reason for the delay, **the specific verification required**, and the date the verification is due.

*MEH*, §20.8.2 (emphasis added).

Deny or reduce benefits when all of the following are true:

- The applicant or member has the power to produce the verification.
- The time allowed to produce the verification has passed.
- **The applicant or member has been given adequate notice of the verification required.**
- The requested verification is needed to determine current eligibility. Do not deny current eligibility because a member does not verify some past circumstance not affecting current eligibility.

*MEH*, §20.8.3 (emphasis added).

First, under *MEH*, §20.7.1.1, the agency did not give the petitioner a minimum of 10 calendar days to provide any necessary information. The request for verification was issued October 1; the deadline should have been October 11. The October 1 request for verification also does not advise the petitioner of the specific verification they felt they needed to verify trust income. Secondly under *MEH*, §20.8.2, the September 30, 2019 notice that petitioner's application was pending provides no guidance to petitioner, nor does the October 1, 2019 notice that the due date to complete the application was extended to October 10, 2019. Neither of those documents specify any verification that is needed, nor provide a verification checklist to notify the member of the reason for the delay, the specific verification required, and the date the verification is due. Thirdly, under *MEH*, §20.8.3, and because of the foregoing, I do not find the

member has been given adequate notice of the verification required. If the agency required a signed statement from the trustee, it should have specified it. If it found the AR's verification fraudulent in some capacity, it could have simply specifically requested the specific verification it needed. See *MEH*, §20.1.4. The trust document was provided, there is no appearance of deception, so it is unclear why the statement by the AR was insufficient. I find the agency has not met its burden to show that it correctly denied petitioner's application for MA for failing to verify.

Petitioner has requested a decision on the issue of divestment raised at hearing. The question is whether jurisdiction is present to reach the merits of the petitioner's appeal on divestment. Jurisdiction is available to review an adverse action against MA such as a denial, termination or reduction. See, Wis. Adm. Code §HA 3.03(4). In this case however, the agency is "exploring divestment", and as such there is no negative action for me to address - yet. Accordingly, this issue is not ripe for adjudication, and jurisdiction is not present.

### CONCLUSIONS OF LAW

1. The agency has not met its burden to show that it correctly denied petitioner's application for MA due to failing to verify assets.
2. The issue of divestment is not ripe for adjudication, and jurisdiction is not present.

**THEREFORE, it is**

**ORDERED**

The matter is remanded to the agency to process petitioner's application for MA in accordance with Finding of Fact #15 and to issue a notice of decision regarding same. These actions shall be done within 10 days of the date 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 5<sup>th</sup> Floor, 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.

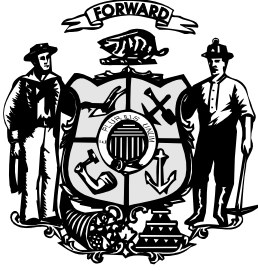
### **APPEAL TO COURT**

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 Milwaukee,  
Wisconsin, this 28th day of January, 2020

\s \_\_\_\_\_  
Kelly Cochrane  
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 28, 2020.

Walworth County Department of Human Services  
Division of Health Care Access and Accountability

