



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION
Case #: MGE - 197380

PRELIMINARY RECITALS

Pursuant to a petition filed December 27, 2019, under Wis. Stat., §49.45(5), to review a decision by Milwaukee Enrollment Services to deny Medical Assistance (MA), a hearing was held on February 26, 2020, by telephone. A hearing set for January 29, 2020 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner failed to provide verification timely.

PARTIES IN INTEREST:

Petitioner:

Petitioner's Representative:

[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

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

Respondent:

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

By: [Redacted]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. Petitioner and her husband are both residing in a nursing home. Applications for MA were filed and denied prior to the one at issue here.

3. On October 31, 2019 an application for nursing home MA was filed on petitioner's behalf with a 3-month backdate request. The request was filed by petitioner's daughter on her behalf with assistance from Atty. [REDACTED]. Neither petitioner nor her husband are able to give their daughter full assistance with the process.
4. Petitioners own real estate properties managed by a property company under their name. On November 5, 2019 the agency requested verification of the business, including current earnings. It also asked for verification of various transactions shown on the couple's back statement dating back to 2014. Two later verification requests were made, essentially asking for the same information, with a final due date of December 12, 2019.
5. Atty. [REDACTED] responded to the requests. Of major importance, she explained that the 2018 business tax return had not been prepared yet, and that they were waiting for the accountant to do so. The verification provided also raised other issues, as more large transactions were discovered.
6. As of December 12, 2019, various items were not yet provided, including the tax returns, cash value of two life insurance policies, and information concerning possible divestments. The last three items were discovered in December, and the agency did not make a specific request for their verification because time had run out on other items. There also were other items still not verified.
7. By a notice dated December 16, 2019, the agency denied the application because verification was not complete.

DISCUSSION

An MA application typically must be processed within 30 days. Wis. Admin. Code, §DHS 102.04; MA Handbook, Appendix 2.7.1. The application time frame can be extended up to 10 days if the applicant needs more time to provide verification. Id.

The MA applicant is required to verify information that can affect eligibility. Wis. Admin. Code, §DHS 102.03. If the household fails to verify required information by the time limit, the agency may deny the benefits. Wis. Admin. Code, §DHS 102.03(1). The agency should assist the applicant if she requests assistance. MA Handbook, App. 20.5. If sources of verification are unavailable, the agency should use the best information available. Id.

The Handbook, App. 20.8.3, provides as follows:

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

1. The applicant or member has the power to produce the verification.
2. The time allowed to produce the verification has passed.
3. The applicant or member has been given adequate notice of the verification required.
4. 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.

In this case the agency denied the application because all requested verification was not provided by the extended due date. Technically that is correct, but this application was highly unusual for two reasons. First, the person acting on the applicant's behalf is a daughter who has some, but not total, knowledge of the applicant's financial circumstances. Second, petitioner and her husband have a complex financial situation. They own property held by a limited liability corporation. There is a history of large

withdrawals from back accounts, and as the agency discovered in December, a sale of a property in 2015 with the proceeds' destination unclear. Petitioner's daughter, and the law firm representing the couple, have been discovering financial transactions unknown to them (for example, petitioner's daughter was unaware of the two [REDACTED] life insurance policies until the agency discovered them in its investigation).

Because of the unusual situation, and the clear evidence that the law firm and petitioner's daughter have been attempting with diligence to comply with the financial requests, I am going to remand the matter to the agency with instructions to provide at least an additional 30 days to provide verification to the best of the representatives' ability (I say "at least" in case minor issues still remain after 30 days that can be resolved timely). During the hearing it was noted that the 2018 LLC tax return finally has been completed, and if that is made available it will at very least verify that the properties are exempt as income producing, as well as verify the couple's income from the LLC. It appears that the life insurance cash values are now known. The big problem could be the verification of what happened to various bank withdrawals, and the agency might simply have to use the best information available (any divestment issue is not ripe here). Other issues mentioned by Ms. [REDACTED] during the hearing struck me as ones that could be resolved if the representatives are told about them.

While this result goes outside the time limits usually prescribed for processing applications, the unusual circumstances warrant it. I believe that Ms. [REDACTED] is capable of working with petitioner's representatives to come to a full understanding of whether the couple is financially eligible for MA. If petitioner is dissatisfied with the result a new appeal can be filed.

CONCLUSIONS OF LAW

Because of the unusual circumstances surrounding the financial portion of petitioner's applications, the matter warrants a remand to allow more time for petitioner's representatives to provide financial verification in order to determine eligibility.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to provide petitioner at least 30 additional days from the date of this decision to provide financial verification as best able in order to determine petitioner's eligibility for nursing home MA based upon the October 31, 2019 application date. The agency shall make the determination and inform petitioner of the results within that time frame.

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.

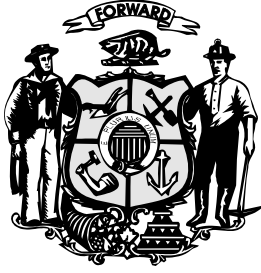
APPEAL TO COURT

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 2nd day of March, 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 March 2, 2020.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability

