



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MGE - 197359

PRELIMINARY RECITALS

Pursuant to a petition filed on December 23, 2019, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Pierce County Department of Human Services regarding Medical Assistance (MA), a hearing was held on February 4, 2020, by telephone.

The issue for determination is whether the petitioner had a valid reason for not obtaining his wife's signature on his medical assistance application.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: [Redacted]
Pierce County Department of Human Services
412 West Kinne Street
PO Box 670
Ellsworth, WI 54011

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

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Chippewa County.

2. The petitioner is married. He and his wife moved into separate homes during the summer of 2019.
3. The petitioner applied for medical assistance, including MA-Waiver benefits, on October 9, 2019. His wife did not sign his application. The department denied the request for MA-Waiver benefits on November 11, 2019, because he did not verify his bank account and life insurance policy.
4. The department notified the petitioner on November 12, 2019, that he could file a hardship waiver to become eligible.
5. The petitioner was found functionally eligible for Family Care on December 4, 2019.
6. The petitioner verified his bank accounts and life insurance policy on December 4, 2019.
7. The petitioner filed a hardship waiver on December 11, 2019.
8. The petitioner reapplied for Family Care on December 13, 2019. The department denied his application on January 10, 2019, because his wife did not sign it and she did not verify a life insurance policy and various bank accounts
9. The petitioner is a 75-year-old man diagnosed with congestive heart failure, atrial fibrillation, coronary artery disease, chronic anticoagulation, cystitis, poorly controlled diabetes, and moderate dementia. Tests performed on July 17, 2018, indicated that his memory disorders were “well below the 1<sup>st</sup> percentile.” But his speech was “fluent, articulate, and goal oriented”; his “[a]ffect was pleasant and mood appeared normal”; and his judgment was “fair.”

### DISCUSSION

Family Care provides appropriate long-term care medical assistance services for elderly or disabled adults. Wis. Stat. § 46.286; *see also* Wis. Admin. Code, Chapter DHS 10. Potential recipients are first tested to determine if they are functionally eligible, which usually means that they must prove they require the level of care found in a nursing home. The petitioner, a 75-year-old man with various mental and physical problems, was found functionally eligible on December 4, 2019.

Those found functionally eligible are tested to determine whether they are financially eligible for medical assistance. If their ability to function is sufficiently impaired and their income and assets are sufficiently low, they are certified for eligibility and then referred to a Managed Care Organizations (MCO), which drafts a service plan. *See* Wis. Admin. Code, § DHS 10.36(1). Family Care regulations state that a person is first entitled to the program’s benefits on the date he signs a contract with the MCO. Wis. Admin. Code, § DHS 10.36(2).

As is true for regular medical assistance benefits, a person usually cannot have more than \$2,000 in assets and still be eligible for the program. But this asset limit can impose a severe hardship on the spouse of one seeking medical assistance. To alleviate this, the federal government and Wisconsin passed laws that allow a person considered institutionalized to allocate assets to his spouse who remains in the community. *See* Wis. Stat. § 49.455. A person who participates in a medical assistance waiver program such as Family Care is considered institutionalized, and the hardship provisions apply. *Medicaid Eligibility Handbook*, § 18.1; Wis. Stat. § 46.286(6). Generally, the spousal impoverishment provisions allow persons with under \$100,00 in countable assets to transfer \$50,000 of those assets to the community spouse. Wis. Stat. § 49.455(6)(b); *Medical Eligibility Handbook*, § 18.4.3. Because the spouse considered institutionalized may retain an additional \$2,000, the couple can have a total of \$52,000 and still have one of them eligible for benefits.

To ensure that applicants meet these limits, they must verify their assets. Wis. Admin. Code, § DHS 102.03(3)(h). Agencies may deny applications if an applicant “is able to produce required verifications but refuses or fails to do so” within 10 days of the date the information was requested or within 30 days of

the date of the application, whichever is later. *Medicaid Eligibility Handbook*, § 20.7.1.1. *see also* Wis. Admin. Code § DHS 102.03(1).

Until 2013, if the spouse in the community refused to sign the application and cooperate in the gathering of assets, the medical assistance worker was instructed to base eligibility entirely on the applicant's financial situation. Those considered institutionalized transferred all of the assets to spouse still in the community, the community spouse refused to sign the application, the newly destitute nursing home resident was found eligible, and the family assets remained intact.

When the elder law bar finds a loophole, the legislature and the department usually try to plug it. Section 49.455(5)(e) of the Wisconsin Statutes now allows the department to deny benefits if the spouse still in the community refuses to cooperate:

The department may deny to the institutionalized spouse eligibility for Medical Assistance if, when requested by the department, the institutionalized spouse and the community spouse do not provide the total value of their assets and information on income and resources to the extent required under federal Medicaid law or sign the application for Medical Assistance.

The use of the term *may deny* indicates that the department is not required to deny all applications that are not signed by both spouses. This recognizes that sometimes a person who needs medical care legitimately cannot obtain his spouse's signature and cooperation. The department's policy requires it to deny applications where the community spouse "refuses to sign or cooperate unless it determines that the denial "would result in undue hardship for the person." *Medicaid Eligibility Handbook*, § 2.5.3. Undue hardship occurs when denial of long-term care services would deprive the recipient of any of the following:

- Medical care, which then endangers the person's health or life
- Food
- Clothing
- Shelter
- Other necessities of life

*Medical Eligibility Handbook*, § 22.4.

The department eventually found the petitioner ineligible because he and his wife did not verify their assets and she failed to sign the applications. The petitioner's attorney contends that the department violated various standards of timeliness because it took 92 days from when he first applied to when the department denied the application. Her argument is misleading because it misstates the evidence. The petitioner filed two applications, one on October 19, 2019, and the other on December 13, 2019. The department denied the first on November 11, 2019, because he and his wife did not verify their bank accounts and life insurance within 10 days. He eventually verified his assets on December 4, 2019. On December 13, 2019, he reapplied. The department denied this application because his wife did not sign it and she did not verify her bank accounts and life insurance policy.

The petitioner filed a request for hardship waiver on December 11, 2019. The department did not act on it because his appeal was pending. I am unaware of any law or policy that prevents it from acting while a case is pending. If the department approved the request, it would make the matter moot, and a hearing would be unnecessary; if it denied the request, the hearing would proceed as planned. For this hearing, I will assume that the request was denied.

That denial would have been proper. Hardship waivers are only allowed if the application is denied, a community spouse has refused to sign the application or provide required information, the applicant's house has equity exceeding \$750,000, a divestment penalty has been imposed, or a spousal impoverishment case has excess assets *Medical Eligibility Handbook*, § 22.4.1. The petitioner's wife has not signed the application, but even if that reason is eliminated, the denial can be upheld because the petitioner did not verify his own assets and never provided a reason for doing so. (There may also have been a divestment, but I am not considering that because the department did not list it in its denial notices as a reason for either denial.

As noted the department denied the second application because his wife did not sign it or verify her assets. This is a sufficient reason to deny the application. The petitioner should have filed a new hardship waiver because only one he has filed applies to his original application and not the latter one. Nevertheless, I will consider it because the evidence is before me and it might save a future appeal.

Hardship waivers are considered in situations where a spouse "refuses" to sign an application or verify information. The petitioner's spouse could not refuse to do these things because the petitioner never asked her to. His attorney contends that he has not asked her because he fears for his safety, claiming that she has abused him in the past. None of these allegations are supported by testimony or documentation. And it does not explain why someone else such as an attorney or worker could not ask her to sign the application. Until there is some evidence that she has actually refused to sign the application or provide the requested verification, the petitioner is not entitled to a hardship waiver. Based on this, I find that the department correctly denied the petitioner's application for Family Care Medical Assistance and that he is not entitled to a hardship waiver.

### CONCLUSIONS OF LAW

1. The petitioner did not verify his assets after his October 9, 2019, application for medical assistance.
2. The petitioner is not entitled to a hardship waiver because he has not established by the preponderance of the evidence that his wife refused to sign his application or verify her assets.
3. The department properly denied the petitioner's applications for Family Care Medical Assistance.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal is dismissed.

### **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.

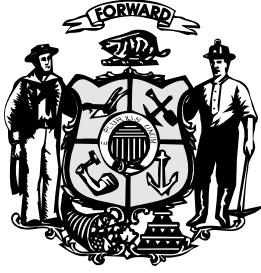
**APPEAL TO COURT**

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 4th day of March, 2020

\s \_\_\_\_\_  
Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on March 4, 2020.

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

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