



FH



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

In the Matter of

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

DECISION
Case #: MGE - 197888

PRELIMINARY RECITALS

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

The issue for determination is whether the department correctly denied the petitioner's request for institutional medical assistance because he failed to verify information.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: [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 Eau Claire County.
2. The petitioner applied for medical assistance three times, the last on November 20, 2019. The department denied his third request on December 20, 2019, because it contends he failed to verify all of his financial information.
3. The petitioner entered the nursing home on August 23, 2019, and seeks benefits retroactive to then.
4. The petitioner's representative spoke with a worker on September 11, 2019, and stated that he would provide a statement verifying the value of a timeshare.
5. On September 12, 2019, and November 25, 2019, the department requested verification of income and assets
 - a. Both requests including at least 10 separate requests for timeshare information. Each of the requests for timeshare information indicated that the department was seeking "Credit Union or Bank Statement showing current balance; Statement from financial institution or investment company; Trust Agreement; or Copy of Bonds."
 - b. The November 25, 2019, request sought the following information about an annuity: "Credit Union or Bank Statement showing current balance; Statement from the financial institution or investment company; trust Agreement; or Copy of Bonds."
 - c. Verifications requested on September 12, 2019, were due on October 10, 2019, and verifications requested on November 25, 2019, request were due on December 20, 2019.
6. On October 10, 2019, the petitioner's representative submitted 41 pages of indexed explanation and documentation of the requested information. This included a two-page, 11-paragraph explanation of the state of the timeshares. It pointed out that the petitioner and his wife stopped making mortgage and maintenance payments in 2016 and 2017. The petitioner's representative listed them on the application because he did not know if the petitioner and his wife had any remaining ownership interest in them. However, he pointed out, the company stopped communicating with them a year or two earlier, and its policy, which was attached, indicates that if they do not pay the fees the company can "[c]ancel membership in the Club therefore relinquishing the owner from any rights of ownership or usage." Because the petitioner and his wife have made no payments on the mortgage or the dues since 2016 or 2017 and they have not received a letter from the company since 2018, their representative assumed that the properties have no value to them.
7. The department denied the second application on October 10, 2019.
8. The petitioner provided a statement from the company holding his annuity that showed its cash-surrender value, its total cost basis (tax-free portion), and total taxable portion.
9. The department determined that the petitioner inadequately verified his annuity because he did not provide the annuity contract.
10. The department determined that the petitioner inadequately verified his timeshare information because he did not provide documentation that gave a current value for the properties.

DISCUSSION

Medical assistance applicants must verify their assets before they qualify for the program. Wis. Admin. Code, § DHS 102.03(3)(h). The department denied the petitioner's application for institutional medical assistance because it contends he did not adequately verify his assets. This application, which he filed on November 20, 2019, was his third application since July 2019. Because eligibility can begin "the first day

of the month 3 months prior to the month of application,” only the department’s decision concerning this last application must be reviewed because that application was filed early enough to allow him to receive medical assistance retroactive to August 23, 2019, the date he entered the nursing home. *See* Wis. Adm. Code § DHS 103.08(1).

The agency usually must determine eligibility within 30 days of when a person fills out an application, but this period can be extended when attempts to verify information cause delays. Wis. Admin. Code, § DHS 102.04(1). The department allows 10 days beyond the normal 30-day period to determine eligibility if the applicant has trouble obtaining verification. *Medicaid Eligibility Handbook*, § 2.7. Applicants have the primary responsibility for obtaining information and they must also resolve questionable information. *Medical Eligibility Handbook*, § 20.5. But workers are instructed: “Assist the member in obtaining verification if he or she requests help or has difficulty in obtaining it.” *Medicaid Eligibility Handbook*, § 20.1.4. And the department cannot deny benefits if the recipient is incapable of obtaining the verification or needs help getting it. *Id.*, Wis. Admin. Code, § DHS 102.03(1).

The various rules pertaining to verification reflect the tension between ensuring that the indigent receive medical care and that state funds are spent only on those who qualify. Excessively stringent verification procedures will lead to some who need benefits not getting them because a person may have lost access to the documents required to complete the verification or lack the physical or mental ability to comply with the request. Conversely, excessively lax procedures will allow some who should be ineligible for benefits to receive them.

Applicants bear the primary responsibility for obtaining information, and they must also resolve questionable information. But agencies cannot “deny eligibility when the member does not have the ability to produce verification.” Furthermore, they must “[a]ssist the member in obtaining verification if he or she has difficulty in obtaining it.” *Medicaid Eligibility Handbook*, § 20.5. This policy reflects the regulation found in Wis. Admin. Code § DHS 102.03(1). It requires agencies to deny applications if a recipient “is able to produce required verifications but refuses or fails to do so,” but states: “If the applicant or recipient is not able to produce verifications, or requires assistance to do so, the agency may not deny assistance but shall proceed immediately to verify the data elements.” *Id.*

The department contends that the petitioner did not adequately verify his annuity and his timeshare holding. For the annuity, it asked him to submit: “Credit Union or Bank Statement showing current balance; Statement from the financial institution or investment company; trust Agreement; or Copy of Bonds.” The petitioner provided a statement from the company from the company holding his annuity showing its cash-surrender value, its total cost basis (tax-free portion), and total taxable portion. The department contends that this is inadequate because he did not provide the annuity contract. The department cannot send a generic request, have the petitioner provide what was asked for, and then deny his application because he did not provide specific information it apparently wants but never asked for. The petitioner adequately verified his annuity.

Determining whether he adequately verified his timeshares is more difficult. He and his wife held several timeshares from the same company. According their son, who has acted on their behalf in all their interactions with the department, they could not afford these properties and stopped making mortgage and maintenance payments three or four year ago. The company sent them notices demanding payment and warning them that it could “[c]ancel membership in the Club therefore relinquishing the owner from any rights of ownership or usage.” Because the company has not sent any letters out for a couple years despite the petitioner’s failure to make any further payments, his son assumes that it canceled his membership, which removes any value the properties have. The petitioner’s son also testified that was locked out of the company’s system and could not get the information. Instead, he submitted a two-page, 11-paragraph explanation of the state of the timeshares and documents showing that action threatened by the company.

It is unlikely the timeshares have any value after the petitioner went years without making any payments. Verification would have removed all doubt, which is the point of verification—it eliminates the need to determine who is credible. Because of this, I understand why the department denied the application. Nevertheless, overall, the petitioner’s son provided over three dozen indexed pages of verification and kept in contact with the department’s workers. The record establishes that he made a good-faith effort to get more information pertaining to the timeshares and could not. His discussions with the department’s representatives were enough to alert them to his trouble gathering the information, which triggered the requirement in *Medicaid Eligibility Handbook*, § 20.5, and Wis. Admin. Code § DHS 102.03(1) that they help him obtain this information or make a decision based on the information they already had. Therefore, I find that he did adequately verify his financial information. Because the department has no other objection to his eligibility, other than a potential divestment that will be discussed briefly below, I find that he is eligible retroactive to August 23, 2019.

In making this decision, I am aware that the petitioner did not specifically ask for help. However, his burden of proof is merely by the preponderance of the evidence. Although the department had substantial justification for its actions, he has met this burden.

The department indicated that the petitioner may have divested some of his funds. Because it never sent him a written request that he verify how these funds were spent, I will not deny his eligibility on this basis. If it still has concerns about this, it should bring a new action. This, however, does not allow it to delay his eligibility.

CONCLUSIONS OF LAW

The petitioner adequately verified his assets.

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 take all steps necessary to find the petitioner eligible for institutional medical assistance retroactive to August 23, 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, 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.

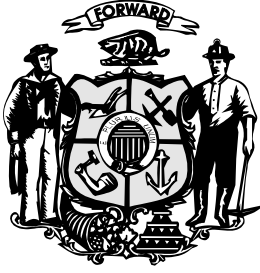
APPEAL TO COURT

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 20th day of March, 2020

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



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 20, 2020.

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