



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: CWA - 198273

PRELIMINARY RECITALS

Pursuant to a petition filed on March 10, 2020, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on May 26, 2020, by telephone.

The issue for determination is whether the annuity in question should be considered as income for petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
c/o [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:

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.

2. Petitioner applied for MA on 12/5/19.
3. Petitioner created an annuity on 10/25/19 with retirement savings.
4. Payments will be made over the 48 months of petitioner's life expectancy.
5. Petitioner's wife is the sole payee of the annuity.
6. The State of WI Estate Recovery Program is named as the remainder beneficiary of the annuity.
7. The creation of the annuity was not a divestment and is not available to petitioner.
8. The agency denied the MA application due to the monthly income being available to petitioner.

DISCUSSION

At hearing, after the presentation of detailed testimony by petitioner, the agency representative agreed that the annuity in question should be considered as income solely for the community spouse if the petitioner is enrolled in long-term care Medicaid. The agency informed petitioner that a new application for long-term care Medicaid will need to be filed.

I do not determine an enrollment date or date of eligibility for long-term care or a waiver program in this decision. There is no record sufficient for me to alter the current state of affairs and petitioner withdrew the request for backdated enrollment. Based on the record at hearing, the petitioner should reapply for long-term care if he has not already. The agency has already agreed to apply the annuity for the community spouse and not for petitioner.

CONCLUSIONS OF LAW

The annuity in question must be counted as income only for the community spouse and not for the petitioner.

THEREFORE, it is ORDERED

That this matter is remanded to the agency and the ADRC with instructions:

1. to work with petitioner and his representatives redetermine LTC and waiver eligibility and enrollment by considering the annuity in question as income only for the community spouse and not for the petitioner;
2. That the ADRC must effort with Miles to conclude this process within 10 days of this decision;

These actions must be completed within 10 days 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, 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.

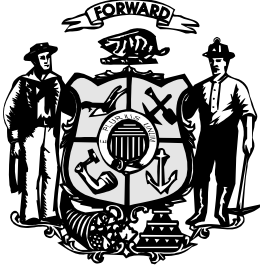
APPEAL TO COURT

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 3rd day of August, 2020

\s _____
John P. Tedesco
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 August 3, 2020.

Milwaukee Enrollment Services
Bureau of Long-Term Support

