



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MGE - 203793

PRELIMINARY RECITALS

Pursuant to a petition filed November 29, 2021, under Wis. Stat., §49.45(5), to review a decision by the Eau Claire County Dept. of Human Services to deny Medical Assistance (MA), a hearing was held on December 21, 2021, by telephone.

The issue for determination is whether petitioner's assets were over the limit in September, 2021.

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

O'Neill Elder Law
2424 Monetary Blvd. Suite 201
Hudson, WI 54016

Respondent:

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

By: [Redacted]
Eau Claire County Dept. of Human Services
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) was a resident of Pierce County; he died October 9, 2021. Eau Claire County DHS handles Pierce County MA applications as part of the Great Rivers Consortium.
2. On September 29, 2021, an application for nursing home MA was filed on petitioner's behalf, seeking coverage beginning September 1 under Spousal Impoverishment rules. After the asset

assessment, the community spouse asset share was set at \$50,000, meaning that the asset limit for petitioner's eligibility was \$52,000.

3. The couple had five non-exempt accounts – a checking account, two savings accounts, an annuity, and a life insurance cash value. The values of the latter four accounts totaled \$54,295. Those values remained essentially the same from the beginning to the end of September; there was no activity except for slight interest increases.
4. At the beginning of September, the checking account had a balance of approximately \$15,000. Regular deposits totaling \$3,660.10 were made from social security and pensions. Checks totaling approximately \$17,500 were written, so that the balance of the checking account on September 30, 2021 was \$983.80.
5. When the county worker reviewed eligibility, she deducted the \$983.80 checking balance to account for the income deposits because income is not counted in the month received. She did not deduct income from the balances of the other four accounts. Therefore, by a notice dated December 7, 2021, the county agency denied MA because the \$54,295 balance of the four remaining accounts was above the \$52,000 MA asset limit (I note that this appeal was filed before December 7 because the worker informed petitioner's attorney of the result before the notice was sent).

DISCUSSION

The federal Medicaid Catastrophic Coverage Act of 1988 (MCAA) included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat., §49.455(1).

When initially determining whether an institutionalized spouse is eligible for MA, county agencies are required to review the combined assets of the institutionalized spouse and the community spouse. MA Handbook, Appendix 18.4.1. All available assets owned by the couple are to be considered. Homestead property, one vehicle, and anything set aside for burial are exempt from the determination. The couple's total non-exempt assets then are compared to an "asset allowance" to determine eligibility.

The asset allowance for this couple was \$50,000. MA Handbook, App. 18.4.3, which is based upon Wis. Stat., §49.455(6)(b). \$2,000 (the MA asset limit for the institutionalized individual) is then added to the asset allowance to determine the asset limit under spousal impoverishment policy. If the couple's assets are at or below the determined asset limit, the institutionalized spouse is eligible for MA. If the assets exceed the above amount, as a general rule the spouse is not MA eligible.

The issue here is the treatment of the assets in terms of the couple's monthly income. It is Department policy that income cannot be treated as an asset in the month it is received. MA Handbook, App. 16.1. However, the policy affects only the asset into which the income is deposited. Appendix 16.1 includes the following examples. First, if the checking account balance of \$2,600 includes a \$700 social security deposit, the agency counts only \$1,900 as the asset amount. The second example is this: "Mrs. Jones has \$2,400.00 in her checking account for the month of March. She receives Social Security of \$1,000.00 each month. She cashed her Social Security check and used the cash to pay her bills. Because her income is not included in the checking account balance, the income should not be deducted from the checking account balance."

The county worker interpreted the example to mean that the income is "deducted" only from the balance of the account into which the income was deposited. Petitioner argues that the total income should be deducted from the total asset value, not just the balance of the checking account. However, if that were so,

the second example would be meaningless. Nowhere in the policy (or in the statute or administrative code, for that matter) does it say that monthly income should be deducted from the balance of all assets. The only mention in the policy is that income is not counted in the asset into which it is deposited. Example two would be meaningless because Mrs. Jones's \$1,000 social security income could be deducted from other assets, under petitioner's interpretation.

Petitioner argues that the facts in Example 2 are not the same as in his case because he did deposit the income into the account. However, the key point in both examples is that the income is ignored only insofar as it affects the balance of the account it is deposited into, not the value of all assets.

Petitioner also argues that the county's determination would result in the income being counted as both an asset and as income. That would be true in Example 2, however. The social security would be counted as unearned income, see MA Handbook, App. 15.4.10, and it would not be deducted from the value of the checking account.

I conclude that the county correctly determined that petitioner's assets were over the MA limit. Ignoring income deposited into an account is the Department's policy, not a statutory or code provision, and thus the Department can make the policy apply only to the account directly affected by the income deposit. Since the income was deposited into petitioner's checking account, it affects only the checking account's value. The rest of the couple's assets were above the asset limit both at the start and end of the month of application.

CONCLUSIONS OF LAW

1. The county worker correctly reduced only the value of the checking account affected by the income deposited into it; income cannot be "deducted" from the value of other assets.
2. The county agency correctly determined that petitioner's assets were over the MA limit.

THEREFORE, it is

ORDERED

That the petition for review is hereby 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, 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

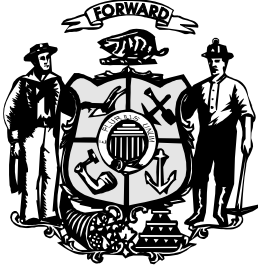
IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

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 23rd day of December, 2021


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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 December 23, 2021.

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

