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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MGE - 209343

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on July 14, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Marathon County Department of Social Services regarding Medical Assistance (MA), a hearing was held on August 16, 2023, by telephone.

The issue for determination is whether the agency correctly counted petitioner's assets.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Anthony Meier

Marathon County Department of Social Services  
400 E. Thomas Street  
Wausau, WI 54403

**ADMINISTRATIVE LAW JUDGE:**

Beth Whitaker

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a widowed [REDACTED]-old resident of Portage County.
2. On March 31, 2023, the petitioner filed an ACCESS online application for Badger Care Plus.
3. On April 4, 2023, the agency received an ADRC referral for managed long-term care services (Family Care, Long term care Waiver and MAPP).

4. On April 27, 2023, the agency issued to petitioner a Notice of Proof Needed, for nursing home long term care, requesting verification of health insurance premium, cash value of a whole life insurance policy, checking account and savings account value, and vehicle information and other items, due on May 22, 2023.
5. On May 2, 2023, the agency issued a Notice of Proof Needed regarding the value of two whole life insurance policies and a checking and savings account and other expenses, due on May 22, 2023.
6. On May 23, 2023, the agency issued an About Your Benefits notice, informing petitioner that her May 22, 2023 application for Medicaid was denied and that effective May 1, 2023, she was not enrolled in Medicaid Purchase Plan (MAPP) because she did not provide proof needed; and that effective May 1, 2023, she was not enrolled in the Medicare Savings Program (QMB) because the income counted for her household was over the program limit, because she failed to provide proof needed and because QMB benefits do not begin until the month after the application has been fully processed.
7. On June 13, 2023, petitioner provided additional verification.
8. On June 28, 2023, the agency issued an About Your Benefits notice, informing her that her June 27, 2023 application for health care benefits was denied. It stated that effective June 1, 2023, she was ineligible for Medicaid because her income and assets exceeded program limits; she was ineligible for Community Waivers because her assets exceeded the program limit; she was ineligible for Medicaid Purchase Plan (MAPP) because her assets exceeded the program limit, she was ineligible for Medicare Savings program for multiple reasons, because her income and assets exceeded the program limit and because QMB do not being until the month after the application is fully processed.
9. On July 14, 2023, the Division received petitioner's request for hearing.

### DISCUSSION

To be eligible for "Elderly / Blind / Disabled Medicaid" ("EBD Medicaid"), a category that includes "Nursing Home Long Term Care" (also referred to as "Institutional Medical Assistance"), an unmarried individual must meet certain financial eligibility requirements. One of those requirements provides that an unmarried individual may not own countable, available assets in excess of \$2,000. Medicaid Eligibility Handbook [MEH] §16.1 and 39.4.1.

Regarding eligibility for Medicaid, the agency stated in its June 28, 2023 notice that petitioner's counted income was \$1,294, in excess of the counted income limit of \$1,215 and that her counted assets were \$97,100, in excess of the counted asset limit of \$2,000. She was found ineligible for both reasons, effective June 1, 2023.

Petitioner disagrees with the agency's counting a motor vehicle that petitioner sold and does not possess, but which is still titled to her and real estate being sold under a land contract. The agency is required to count the value of all available assets.

The agency is required to add together all countable, available assets owned by the petitioner. MEH 16.1. A non-exclusive list of categories of assets includes non-home real property and some vehicles. Id.

Petitioner's home where she resides is an excluded asset. The additional property at [REDACTED] is the subject of a sale/purchase contract between petitioner as vendor and another party as purchaser. Property sold by land contract is treated as personal property, not real estate. The seller retains legal title until the property is paid for. MEH 16.7.12. Petitioner's legal title to the property can be sold and converted to cash and is counted as an asset. Id. Petitioner has a legal ownership interest in that property until title is transferred by deed to the purchaser. It is not disputed that petitioner still has legal title to the property.

The contract provides that purchaser may take possession on August 2, 2019 and will make regular payments with interest through a date no later than February 2, 2039. The contract provides that petitioner as vendor agrees “ that if the purchase price with interest is fully paid and all conditions fully performed as specified herein, vendor will execute and deliver to purchaser a warranty deed in fee simple of the property, free and clear of all liens and encumbrances...” Petitioner or her representative testified at hearing that approximately \$32,400 of the total price of \$120,000 has been paid. The agency counted \$6,000 toward interest and the remaining \$26,400 to principle, leaving value of \$96,300 owned by petitioner. The agency is permitted to determine value of property under land contract in that manner or using an appraisal to determine fair market value, using whichever “more accurately reflects the contract’s true value on the date it was originated.” MEH 16.7.12. The manner in which the agency determined the value of this property is correct and the value was determined correctly.

The only condition under which the value of the petitioner’s interest in the property should not counted as an asset is if it is prove that it is unavailable because either the terms of the land contract prohibit its sale or no one is willing to purchase it. Id. To prove the latter, petitioner must have offered it for sale to at least one individual or organization active in the land contract purchasing market and provide a written statement from that party stating that they will not buy it. Id. There is no evidence in this record that that was done. The agency correctly treated this as a counted asset.

Regarding vehicles, petitioner has one vehicle in her possession that is not in dispute. In addition, there is a [REDACTED] Dodge truck that she sold four or five years ago and no longer possesses. Petitioner or her representative testified that she retains title to the vehicle because of a lien. It is not disputed that she pays insurance for the vehicle and that it is registered to her because she still has title to it.

One vehicle per individual is excluded. Regarding this additional vehicle, the rules allow exclusion under certain circumstances such as if it has been junked or is used only for recreation. No exclusion applies here. The agency is required to exclude petitioner’s vehicle that has the higher market value. There is no evidence that it did otherwise. Based on the record, I conclude that the agency correctly valued and counted this vehicle as an asset under MEH 16.7.9.2.

There is an income limit for eligibility. Petitioner did not present evidence regarding income. The agency counted Social Security benefits and a small amount of additional income. Petitioner has the burden of proof and did not show that the income counted is incorrect. Based on this record, I find that the agency correctly counted petitioner’s income as required by MEH 15.1.3.

The agency correctly determined that petitioner was ineligible for Medicaid because her assets and income exceeded the program limit.

### CONCLUSIONS OF LAW

The agency correctly determined that petitioner was ineligible for Medicaid because her assets and income exceeded the program limit.

**THEREFORE, it is**

**ORDERED**

That the petition for review 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

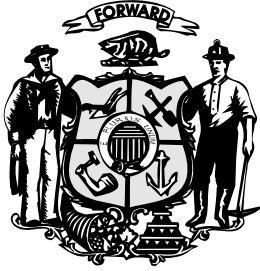
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 2nd day of October, 2023



\s \_\_\_\_\_  
Beth Whitaker  
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 October 2, 2023.

Marathon County Department of Social Services  
Division of Health Care Access and Accountability