



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MGE - 210319

PRELIMINARY RECITALS

Pursuant to a petition filed September 13, 2023, under Wis. Stat., §49.45(5), to review a decision by the Great Rivers IM Consortium to discontinue Medical Assistance (MA), a hearing was held on October 18, 2023, by telephone.

The issue for determination is whether petitioner's assets are over the MA limit.

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Atty. Peter E. Grosskopf
Grosskopf Law Office LLC
1324 West Clairemont Avenue, Suite 10
Eau Claire, WI 54701

Respondent:

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

By: Kristen Burstad
Great Rivers IM Consortium
1316 North 14Th Street
Superior, WI 54880

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Pepin County. It is noted that Douglas County is the lead county in the consortium, and Polk County, where Ms. Burstad works, is also part of the consortium.

2. Petitioner has been eligible for nursing home MA while residing in the [REDACTED]. In August, 2023, the agency processed a renewal after informing petitioner that MA would end September 1 unless the renewal was completed.
3. At the time of the renewal, petitioner had \$18,522.95 in her bank account (the actual amount was higher but the agency did not count the monthly social security deposit). Most of the funds were from a lump sum [REDACTED] payment made in April, 2023. By a notice dated August 22, 2023, the agency informed petitioner that MA would be denied beginning September 1, 2023 because assets were over the limit.
4. In July, 2023, petitioner's son and attorney-in-fact was notified by the [REDACTED] that there likely was an overpayment of [REDACTED] benefits, and the amount of the overpayment was not yet determined. As of the date of this hearing the [REDACTED] still had not informed him of an overpayment amount.
5. On September 12, 2023, petitioner's son wrote a check to the [REDACTED] for \$10,500 to cover September, 2023 costs. He placed \$9,520 in petitioner's attorney's trust account after they estimated that to be the amount of the [REDACTED] overpayment.
6. After being informed of those transactions, the agency still considered the \$9,520 to be available as an asset, and the denial of MA remained in place.

DISCUSSION

The MA asset limit for an individual is \$2,000. Wis. Stat., §49.47(4)(b)3g. If assets are above that limit, the person is not eligible for MA. The statute does not allow for outstanding debts to be deducted from assets, nor does it provide any exceptions for unusual situations.

Therein lies the problem for petitioner. Her attorney-in-fact knows that an overpayment claim could be made by the [REDACTED]. However, that has not occurred, and the asset is still in petitioner's control and is available for her care. It does not matter that the money is in Atty. Grosskopf's trust account; as he stated during the hearing, he must follow the directive of the client as to the disbursement of the money, and petitioner's son could request the money back at any time. As noted by the Department's expert, the agency cannot act on future changes. See Agency Exhibit D. I must conclude that the agency correctly determined that the \$9,650 remains an available asset, putting petitioner over the MA limit.

During the hearing I noted that if the money is spent down and the [REDACTED] claim comes later, it is possible that the repayment could reduce petitioner's cost of care. After reviewing the MA Handbook, I am uncertain if I was correct. §27.7.7 of the Handbook allows a deduction from cost of care for medical or remedial expenses and payments for noncovered services. I am uncertain whether a repayment of [REDACTED] funds would be considered remedial expenses; that will have to be determined if and when the recovery actually occurs. For purposes of this appeal, the only issue is whether the money in the trust account is an available asset countable against the MA asset limit. It is.

CONCLUSIONS OF LAW

Funds available to petitioner cannot be excluded from the MA asset calculation because the [REDACTED] might seek recovery of funds in the future.

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

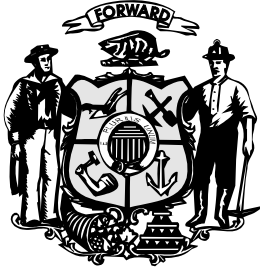
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 20th day of October, 2023



\s _____
Brian C. Schneider
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) 266-7709
FAX: (608) 264-9885
email: DHAMail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 20, 2023.

Douglas County Department of Human Services
Division of Health Care Access and Accountability
Attorney Peter Grosskopf