



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MGE - 209206

PRELIMINARY RECITALS

Pursuant to a petition filed on June 29, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the St. Croix County Health & Human Services regarding Medical Assistance (MA), a hearing was held on October 24, 2023, by telephone. Four previously scheduled hearings were rescheduled at petitioner's request as the parties pursued an informal resolution of the appealed issue.

The issue for determination is whether assets held by the [REDACTED] are countable for purposes of petitioner's MA eligibility.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Thomas O. Mulligan
902 River St
P O Box 457
Spooner, WI 54801-0457

Respondent:

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

By: Emily Tribby

St. Croix County Health & Human Services
1752 Dorset Lane
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washburn County.
2. In 2003, the petitioner and his wife created the [REDACTED]. The petitioner and his wife were the grantors (also referred to as settlors). The petitioner was appointed initial trustee, and his wife was appointed successor trustee. Their children were identified as the Trust's beneficiaries. The trust was funded by the petitioner and his wife with real property identified as Washburn County tax parcels [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].
3. The [REDACTED] contained the following provisions:

III. Lifetime Distributions

...

B. Considerations of Trustee. The Trustee may pay to or apply for my benefit the net income of the trust estate in quarterly or more frequent installments, and shall accumulate and add to principal any undistributed net income. If the Trustee considers the net income of the trust estate insufficient to provide for my proper health, education, support, comfort, companionship and enjoyment in accordance with the standard of living I enjoy at the date of this instrument, the Trustee may pay to or apply for my benefit as much of the principal of the trust estate, up to and including the whole of this trust, as is necessary in the Trustee's discretion for these purposes, ... All or any distributions shall be solely upon the discretion of the Trustee.

...

V. Revocation and Amendment

A. Revocation. I may not at any time revoke this instrument in whole or in part.

...

4. Petitioner had previously been determined eligible for participation in MA benefits, including Medicaid and Community Waivers (IRIS).
5. On June 6, 2023, the agency issued an About Your Benefits letter to the petitioner informing him that his health care benefits would be ending on July 1, 2023, due to income and assets exceeding program limits. The agency found that the [REDACTED] was an available asset for purposes of determining MA eligibility.
6. Petitioner argued that the [REDACTED] [REDACTED] [REDACTED] was irrevocable and consisted entirely of homestead property; as such, the trust assets should be excluded from the petitioner's counted assets.
7. The [REDACTED] is comprised of five real estate parcels, four of which are contiguous; Washburn County tax parcel ID number [REDACTED] is not connected to the remaining parcels.
8. On January 29, 2021, petitioner appealed the termination of his MA enrollment.

DISCUSSION

The issue presented by the parties at the hearing pertained to the agency's treatment of the [REDACTED]. Initially, the agency determined that the trust was an available asset, which resulted in a finding that petitioner was over the asset limit for MA. The record before me does not explain why the Trust was not considered an asset previously, when petitioner was found eligible for MA benefits including IRIS enrollment, in 2020 and 2021.

A revocable trust is defined by MA policy to be a trust "... which can be revoked, canceled or modified by the grantor or a court." Medicaid Eligibility Handbook (*MEH*) §16.6.3. An irrevocable trust is defined by policy to be a "... trust that cannot, in any way, be revoked by the grantor." *MEH* §16.6.4.

Section 49.454, Wis. Stats., determines when a trust is counted toward the MA asset limit. It applies in MA matters "if assets of the individual or the individual's spouse were used to form all or part of the corpus of the trust" and the trust was set up by the individual, his spouse, or someone acting on the individual's behalf or request. Wis. Stat. § 49.454(1)(a). All revocable trusts covered by the statute are available; whereas the contents of irrevocable trusts covered by the statute are considered available "[i]f there are circumstances under which payment from an irrevocable trust could be made to or for the benefit of the individual" seeking or receiving medical assistance. Wis. Stat. § 49.454(3)(a).

The [REDACTED] indicates its purpose is to provide for the general welfare of petitioner (and his wife) and the trustee is given discretionary authority to provide that support. MA policy indicates:

If the resources of the individual or the individual's spouse were used to form all or part of the principal of the trust, some or all of the trust principal and income may be considered a non-exempt asset, available to the individual. **If there are any circumstances under which payment from the trust could be made to or for the benefit of the individual at any time no matter how distant, the portion of the principal from which, or the income on the principal from which, payment to the individual could be made shall be considered non-exempt assets, available to the individual.**

This treatment applies regardless of:

- the purpose for which a trust is established;
- whether the trustees have or exercise any discretion under the trust;
- any restrictions on when or whether distributions may be made from the trust; or,
- any restrictions on the use of distributions from the trust.

MEH § 16.6.4.2 (emphasis added), which is based on Wis. Stat. § 49.454(3)(a).

As noted in the foregoing, if there are any circumstances wherein distribution from the [REDACTED] can be made to or for the benefit of petitioner, no matter how remote, the trust will be deemed available for MA purposes. In this case, while the trust limits or restricts the circumstances under which distribution may be made to petitioner, there nevertheless remains circumstances when those distributions can be made. As there are circumstances under which the principal assets and income of the [REDACTED] may made to or for the benefit of petitioner, I find it is an available asset for purposes of MA eligibility. As such, I am upholding the agency's determination in that regard.

The parties worked earnestly to resolve their issues prior to hearing, and it appeared that these discussions would be successful. Unfortunately, an insurmountable issue arose when the agency discovered that the property held by the [REDACTED] was not entirely contiguous. This negatively impacted petitioner since contiguous homestead property is not a counted asset, whereas non-contiguous parcels lose their “homestead” modifier and are countable. MA policy specifies:

An individual’s home is an excluded asset.

A home is defined as any property an individual has an ownership interest in and which serves as their primary place of residence. An individual’s primary place of residence is the property they consider their principal home and to which, if absent, they intend to return. It can be real or personal property, fixed or mobile, and located on land or water.

The home can include any of the following:

- The shelter in which they reside
- The land on which the shelter is located
- Related buildings on the land

The home can include more than one lot. **Land is considered part of the home as long as the lots adjoin one another and are not separated by land in which neither the individual nor their spouse has an ownership interest.** Easements and public rights of way, such as utility lines and roads, do not separate other land from the home plot. For example, there are farms where the land is on both sides of a road and considered a part of the home. If land is completely separated from the home property by land in which neither the individual nor their spouse has ownership interest, it should not be considered part of the home.

MEH § 16.8.1 (emphasis added). The agency argued that one parcel of property owned by the [REDACTED] is not adjacent to the others, and therefore does not constitute homestead property. That parcel’s value is \$6,600.00, and petitioner’s interest in that parcel is \$3,300.00. Petitioner did not specifically rebut this conclusion, nor otherwise establish that this lone parcel falls under the exceptions identified in MEH § 16.8.1.

At this time, I conclude that the non-homestead assets included in the [REDACTED] [REDACTED] are countable assets for purposes of MA eligibility. Petitioner is encouraged to seek his rehearing rights, included below, if he has other information or evidence that would impact this decision.

CONCLUSIONS OF LAW

The agency properly found the trust established and funded by petitioner to be an available asset for MA eligibility purposes.

THEREFORE, it is ORDERED

That petitioner’s appeal 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, 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

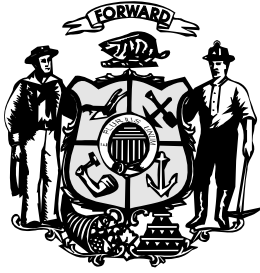
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 8th day of November, 2023



\s _____
Peter McCombs
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 November 8, 2023.

St. Croix County Health & Human Services
Division of Health Care Access and Accountability
Attorney Thomas Mulligan