



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MGE - 210128

PRELIMINARY RECITALS

Pursuant to a petition filed on September 5, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on November 8, 2023, by telephone. A hearing scheduled for October 26, 2023, was rescheduled at petitioner's request.

The issue for determination is whether the agency properly determined that Petitioner owned available countable assets exceeding \$2,000.00 in value.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Bradley J. Sarkauskas
Heritage Law Office of Wisconsin LLC
757 North Broadway, Suite 300
Milwaukee, WI 53202-3645

Respondent:

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

By: Stacy Green
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who suffers from dementia, anxiety, and depression. Testimony of [REDACTED].
2. As a result of his dementia, Petitioner is no longer able to live independently and therefore resides at [REDACTED], an assisted living facility. Exhibit R-1.
3. On June 14, 2023, the agency processed a healthcare renewal, and the case was pended for verification of assets and unearned income. On July 18, 2023, the agency received verification of Petitioner's bank accounts, life insurance policies and unearned income. Testimony of [REDACTED].
4. The agency updated Petitioner's case with the submitted verifications, and determined that Petitioner was not eligible due to assets exceeding MA program limits. The agency found that life insurance policy #4468 had a cash value of \$454.23 and life insurance policy #3686 has a cash value of \$2,585.91. Id.
5. By notices dated July 19, 2023 and August 11, 2023, the agency informed Petitioner that he was not eligible for Medicaid and Community Waivers as of August 1, 2023, because his countable assets exceeded the \$2,000 asset limit. Exhibit R-6.
6. Petitioner filed a timely appeal with the Division of Hearings and Appeals on September 5, 2023. Exhibit P-1.

DISCUSSION

Medical Assistance long-term care waiver programs in Wisconsin include Family Care, Partnership, PACE, and IRIS. These programs are administered by the Department of Health Services and are designed to provide appropriate long-term care services for elderly individuals and individuals with physical or intellectual disabilities. To be eligible, a person must be functionally eligible and generally must also be financially and non-financially eligible for a "full benefit category of [Elderly, Blind, Disabled] Medicaid." See *Medicaid Eligibility Handbook* §28.1.2. Accordingly, an individual who is interested in participating in a long-term care waiver program is expected to undergo a functional eligibility screen, to complete an application to establish financial and non-financial Medicaid eligibility, and finally, to go through an enrollment process. See, e.g., <https://www.dhs.wisconsin.gov/familycare/apply.htm>.

To be financially eligible for any of the "full benefit Elderly, Blind, Disabled programs" applicable to Petitioner (i.e., SSI-related Medicaid, SSI Medicaid, Institutional Medicaid), an individual cannot have more than \$2,000 in countable assets. *Medicaid Eligibility Handbook* §§1.1.2 and 39.4.1.

The question here is whether the cash values of Petitioner's life insurance policies were available as countable assets when the information was processed by the agency in June of 2023.

An asset is countable if it is available. *Id.* at §16.1. And, an asset is available when the following criteria are met:

1. It can be sold, transferred, or disposed of by the owner or the owner's representative, and
2. The owner has a legal right to the money obtained from sale of the asset, and
3. The owner has the legal ability to make the money available for support and maintenance, and
4. The asset can be made available in less than 30 days.

Id. at §16.2.1. An asset is not available if the member lacks the ability to provide legal access to the assets. *Id.*

Petitioner's adult child and power of attorney, ██████████, appeared at hearing and clearly and credibly explained his attempts to liquidate his father's life insurance policy #3686, which had a cash value of \$2,585.91. He testified that he has made multiple attempts to address this issue, and has not been able to get any response from the life insurance policy. The life insurance company's lack of response to his multiple inquires has made it impossible for ██████████ to access these funds, despite the case value assigned.

Based upon the credible testimony of ██████████, I find that the life insurance policy #3686 is not an available asset, and cannot be included in Petitioner's counted assets for purposes of MA eligibility. However, I note to ██████████ that this issue will likely rear its head at future renewals, and, as such, he will need to continue to make every effort to reach the life insurance company and address this asset.

CONCLUSIONS OF LAW

Petitioner's life insurance policy #3686, with a cash value of \$2,585.91 is not an available asset of Petitioner, and therefore not countable for purposes of MA eligibility.

THEREFORE, it is

ORDERED

That this matter is remanded to the respondent to redetermine petitioner's MA eligibility removing Petitioner's life insurance policy #3686, with a cash value of \$2,585.91, from Petitioner's budget calculations. All actions required by this Order shall be completed within 10 days following issuance 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

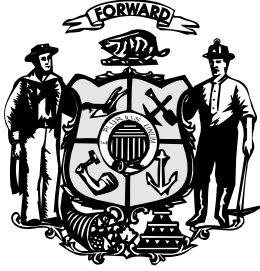
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 22nd day of November, 2023



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 22, 2023.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability
Attorney Bradley Sarkauskas