



State of Wisconsin DIVISION OF HEARINGS AND APPEALS

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December 5, 2023



Aubrey Erknder
Dodge County Human Services
199 Cty Rd DF
Juneau, WI 53039

RE:


Case No. MGE - 209328

Dear Parties:

Enclosed is a copy of the Final Decision in the above-referenced matter.

Sincerely,

Shannon Buboltz
Legal Associate Supervisor

c: Capital Consortium - email
Division of Health Care Access and Accountability - email
Attorney Timothy Langer - email



STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES

In the Matter of

DECISION



Case No: MGE - 209328

The attached proposed decision of the Administrative Law Judge dated October 3, 2023 is hereby adopted as the final order of the Department.

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, Madison, WI 53705-9100 **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.

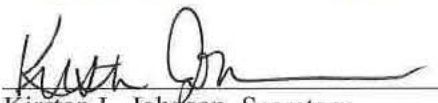
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

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, Madison, WI, 53703, **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 request (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.

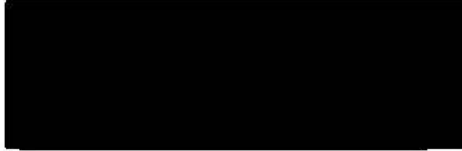
Given under my hand at the City of
Madison, Wisconsin, this 5th day
of December, 2023.


Kirsten L. Johnson, Secretary
Department of Health Services



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



PROPOSED DECISION
Case #: MGE - 209328

PRELIMINARY RECITALS

Pursuant to a petition filed July 12, 2023, under Wis. Stat., §49.45(5), to review a decision by Dodge County Human Services to deny Medical Assistance (MA), a hearing was held on September 27, 2023, by telephone. A hearing set for August 15, 2023 was rescheduled at the petitioner's request.

I note also that I have changed the three-letter code for the decision from "MQB" to "MGE" to correctly identify the hearing type. MQB refers to Medicare Savings programs; this appeal was about general MA eligibility, for which MGE is the proper code.

The issue for determination is whether petitioner's MA eligibility can be backdated to January and February, 2023.

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Atty. Timothy V. Langer
Langer & Petersen
155 E Capitol Dr Suite 3
Hartland, WI 53029

Respondent:

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

By: Aubrey Erknder
Dodge County Human Services
199 Cty Rd DF
Juneau, WI 53039

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a nursing home resident of Dodge County.
2. On Sunday, April 30, 2023, an application for nursing home MA was faxed by petitioner's attorney to the county agency; it sought a three-month backdate to January 1, 2023. The application would be processed under Community Spouse rules, as petitioner's husband resides in the family home.
3. The agency accepted the application, but noted a filing date of May 1, 2023, utilizing Department policy that an application faxed during non-business hours would be deemed to be received the next business day.
4. Because petitioner was first admitted to an institution in May, 2021, the agency had to do an asset assessment back to that date, as well as to determine current assets. A verification request was mailed on May 5, 2023, seeking verification of 45 different items belonging to petitioner and her husband, with a due date of May 31, 2023. Petitioner's attorney requested an extension, which was granted until June 12, 2023. The verification request for 45 items was re-sent on May 31, with the June 12 due date noted.
5. By June 12, most of the verification was provided. Still missing were the values of farm equipment and assets dating back to May, 2021. By a notice dated June 13, 2023, the agency denied the application because verification was incomplete.
6. On Friday, June 30, 2023, petitioner's attorney faxed a new application for MA. The application was accepted as filed that date.
7. On July 12, 2023, petitioner appealed the denial of MA.
8. Prior to the hearing conducted on September 27, 2023, all requested verification was provided. The verification of the farm equipment value had been particularly difficult to compile; petitioner's attorney finally discovered during the processing of the new, June 30 application an insurance policy declaration that listed values of the equipment, and the agency accepted the declaration as verification. The agency opened nursing home MA retroactive to March 1, 2023, three months prior to the June 30, 2023 second application filing.

DISCUSSION

The issue in the matter is the start date of petitioner's nursing home MA. Ms. Erkander acknowledged that petitioner would have been eligible in February, 2023, but that, using the June 30, 2023 application date, the agency could go back no further than March 1, three months prior to the June application date.

The Wisconsin Administrative Code, §DHS 102.04(1) provides that an MA application must be acted upon within 30 days. However, an extension may be granted if there is a delay in securing necessary information. The code is silent as to the length of the extension, as is the MA Handbook, §20.8.2, which allows for a delay but does not specify the maximum time for the delay. I know from past experience that typically an extension would be for ten days, and it appears that was the period used here, but since the tenth day after May 31, June 10, fell on a Saturday, the extension was granted until Monday, June 12. That said, I cannot find any law or policy still in existence that limits the extension to ten days.

Thus, as of June 12, 2023, all verification had been provided except the values of the farm equipment and the assets that existed in May, 2021. Case comments show that the farm equipment verification was received in July, but as of August 7 the agency still needed the values back to May, 2021. Those were received on September 12, and the worker opened MA back to March 1.

The dates of receipt are of importance here. First, from case comments and the notice history, it is evident that petitioner was given another extension of the June 30, 2023 application, until August 7. On August 8, 2023, the agency again sent a denial notice for failure to verify. Then, without a new application, and possibly because an appeal was pending, the agency eventually backdated MA to March 1.

The problem is that, following the June 13, 2023 application denial, petitioner filed both a new application and a timely appeal of the June 13 denial. It follows that, if the June 30 application could be backdated to three months prior to application even after the August 8 denial, the earlier application could also be backdated to three months prior to its filing date. Two important legal points are invoked – first, as noted, there is no time limit for an extension if the person is attempting to provide requested verification (and in this case there was a LOT of verification requested), and second, Wis. Admin. Code §DHS 102.03(1) provides: “An application for MA shall be denied when the applicant or recipient is able to produce required verifications but refuses or fails to do so.... If the applicant or recipient is not able to produce verifications, or requires assistance to do so, the agency may not deny assistance but shall proceed immediately to verify the data elements.” That language is echoed in the MA Handbook, §20.8.3 – benefits are denied if, among other things, the applicant has the power to produce the verification.

Here it is clear that petitioner’s representatives were doing yeoman’s work to obtain the mass of verification needed to determine eligibility. I cannot find that the applicant was able to produce the verification timely, and the county worker even acknowledged that fact by allowing the backdate to March 1 even after the August 8, 2023 denial letter went out.

I conclude, therefore, that petitioner’s MA can be backdated to at least February 1, 2023. She met all eligibility requirements, and she eventually verified all required items despite substantial difficulty in doing so.

And that leads to the final issue – can eligibility be granted back to January 1, 2023? The issue revolves around the date of application. The application indisputably was faxed to the agency on Sunday, April 30, 2023. The transmission would have been received by the agency’s fax machine that date; it simply was not discovered until the next day when the office reopened after the weekend. The MA Handbook, §2.6.1, mandates that if an application is made in person, mailed, or faxed, the filing date is the next business day if it is received after the agency’s regular business hours. The agency here used that provision to set the first application date as May 1, 2023, meaning at best eligibility could be backdated to February 1, 2023.

The problem is that I can find no legal basis for the policy. Wis. Stat., §49.47(4)(d) says simply: “An individual is eligible for medical assistance under this section for 3 months prior to the month of application if the individual met the eligibility criteria under this section during those months.” Nowhere in the statute, including §49.43, “Definitions,” can I find a definition of “month of application.” Similarly, the Wis. Admin. Code, §DHS 101.03, “Definitions,” does not define month of application, and §DHS 103.08(1) provides: “Except as provided in subs. (2) to (5) [none of which are relevant to the issue here], eligibility shall begin on the date on which all eligibility requirements were met, but no earlier than the first day of the month 3 months prior to the month of application.”

To add to the confusion, the MA Handbook, §2.6.3, provides that if an application is filed by computer through the ACCESS link, the filing date is the date it is electronically submitted. Both an ACCESS submission and a fax are forms of electronic submission with a date and time of submission easily accessible. It makes no sense that they are treated differently for establishing the month of application.

I note here that Ms. Erkander stated that if eligibility could be backdated to January 1, 2023, she would require additional verification to ascertain eligibility. I thus will order that petitioner's eligibility be backdated to January 1, 2023 if she meets all eligibility requirements.

CONCLUSIONS OF LAW

Because petitioner appealed the denial of her April 30, 2023 application for failure to verify, and because she was unable to obtain all required verification until after the due date despite her best efforts to do so, eligibility for MA can be backdated to three months prior to the April 30, 2023 application date.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to backdate petitioner's MA eligibility to January and February, 2023 based upon her April 30, 2023 application, if she met all eligibility requirements in those months. The agency shall take the action within 10 days of a final decision, subject to any additional time necessary to complete verification.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH. If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as 'PARTIES IN INTEREST.'

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison,
Wisconsin, this 3rd day of October, 2023



Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals