



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MGE - 210257

PRELIMINARY RECITALS

Pursuant to a petition filed on September 12, 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 October 19, 2023, by telephone. The administrative law judge asked the agency to submit documentation it had received from Petitioner regarding her life insurance policies. The agency representative did so promptly following the hearing and those documents are included in the hearing record.

The issues for determination are whether Petitioner's appeal was timely filed and whether her March 2023 application for SSI-related Medical Assistance was properly denied.

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: Merlton Gaillard
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a [REDACTED] resident of Milwaukee County who applied for Medical Assistance using ACCESS, the agency's on-line portal, on March 28, 2023.
2. Petitioner reported that she had a checking account, a house, and a life insurance policy.
3. Petitioner provided the agency with verification of the checking account and of five [REDACTED] whole life insurance policies.
4. As of March 2023, the balance of her checking account not including any Social Security benefit or other income deposited in that month, was \$858.29.
5. As of March 28, 2023, the total face value of the five life insurance policies exceeded \$1,500.
6. As of March 28, 2023, the combined cash surrender value of the life insurance policies was at least \$3,158.

Policy Number	Cash Value
-0366	\$1,204*
-8055	\$597*
-8728	\$548*
-1383	\$446
-8397	\$363

*The documentation from [REDACTED] regarding these three policies shows the cash value only through the 20th year of Petitioner's ownership of the policy. It may be that the cash values of those three policies stopped increasing as of that year. But it may be that the cash values of those three policies continued to increase modestly every year following the 20th year of ownership. It is however reasonable to presume, absent evidence to the contrary, that the cash surrender values did not decrease in value after the 20th year of ownership.

7. As of March 28, 2023, Petitioner received a monthly Social Security gross benefit of \$1,405. She received no other income.
8. On June 13, 2023, the agency notified Petitioner that she was eligible for Medicare Savings Program (SLMB) as of June 1, 2023 but not eligible for Medical Assistance because her assets and income exceeded the program limits. The notice advised Petitioner that her appeal deadline was July 31, 2023.
9. On July 31, 2023, the agency notified Petitioner that, as of September 1, 2023, she was eligible for SLMB+ rather than SLMB and again notified her that she was not eligible for Medicaid because her income and assets exceeded the program limits. The notice advised Petitioner that her appeal deadline was October 17, 2023.
10. The Division of Hearings and Appeals received a request for hearing from Petitioner on September 12, 2023.

DISCUSSION

TIMELINESS

An appeal of a denial of a Medical Assistance application must be filed within 45 days of the date of the negative action. Wis. Admin. Code §HA 3.05(3). If a hearing request is not timely filed, the Division of Hearings and Appeals (DHA) must dismiss the request. Wis. Admin. Code §HA 3.05(4)(e). A hearing request that is submitted by mail is considered filed on the date of actual receipt by DHA or the date of the postmark, whichever is earlier. Wis. Admin. Code §HA 3.05(3)(c).

In this case, the agency argued that Petitioner's deadline to appeal the denial of her Medical Assistance application was July 31, 2023 since the application was denied on June 13, 2023. However, on July 31, 2023, the agency issued Petitioner a notice regarding a change in her Medicare Savings Program eligibility and included in that notice another statement that Petitioner was not eligible for Medical Assistance because her income and assets exceeded the program limits. That July 31, 2023 notice informed her that her appeal deadline was October 17, 2023. And, Petitioner did file her appeal by that date. I will therefore consider Petitioner's appeal to be timely.

ASSETS

To be eligible for "Elderly / Blind / Disabled Medicaid" ("EBD Medicaid"), 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.

Petitioner owns her home, has a checking account, and five life insurance policies. These are addressed in turn below.

Home: An individual's home is an excluded asset. *MEH* §16.8.1. The value of Petitioner's home is thus not countable.

Checking Account: Savings and checking accounts are countable assets. See *MEH* §16.1. However, income received in a particular month is not countable as an asset. For example, an individual's Social Security benefit deposit is income in the month it is received and only counted as an asset if it is retained into the following month. See *Id.* The record does not include a copy of any bank statement; however, she did not dispute the agency's finding that her bank account balance minus income equaled \$858.29 at the time she applied for benefits.

Life Insurance: If an elderly, blind, or disabled individual owns life insurance value that has a face value (i.e., death benefit) of more than \$1,500, the cash value of that life insurance is a countable asset. See *MEH* §16.1. Following the hearing, the agency forwarded copies of documentation from [REDACTED] that Petitioner had provided as verification of her five life insurance policies. That documentation, as detailed in Finding of Fact No. 6, did not include sufficient detail for me to reach a confident conclusion regarding the cash surrender values of three of the policies as of the date of Petitioner's Medicaid application. However, it was sufficient to establish that the combined cash surrender value of the five policies exceeded \$2,000.

Because Petitioner's countable assets exceeded \$2000, the agency properly denied her March 28, 2023 application for Medical Assistance.

Finally, I note that at the hearing, Petitioner's adult daughter explained that her mother requires some in-home services. Although she is not currently eligible for Medicaid, she has very limited assets and, with accurate legal advice, she may be eligible to convert her life insurance policies into an excludable asset that would allow her to attain Medicaid eligibility. Petitioner's income is low enough to potentially be eligible for Family Care or IRIS, Medicaid programs that can assist elderly and disabled individuals with the costs of long term care including certain types of in-home care. Her income is also low enough to potentially benefit from having a Medicaid deductible calculated. But, her countable assets still must be reduced to less than \$2,000 to be eligible for any of these programs. As the agency representative and I both mentioned during the hearing, Petitioner and her daughter may want to contact Legal Action of Wisconsin and/or the Aging Resource Center in Milwaukee to further discuss her options.

CONCLUSIONS OF LAW

The department correctly determined that the petitioner exceeded the asset limit for Medical Assistance and thus correctly denied her March 28, 2023 application.

THEREFORE, it is ORDERED

The 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.

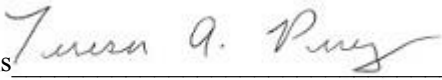
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

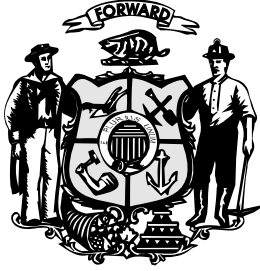
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 7th day of December, 2023

s _____

Teresa A. Perez
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 December 7, 2023.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability