



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MGE - 210503

PRELIMINARY RECITALS

Pursuant to a petition filed September 29, 2023, under Wis. Stat., §49.45(5), to review a decision by Milwaukee Enrollment Services to discontinue Medical Assistance (MA), a hearing was held on December 13, 2023, by telephone. A hearing set for November 15, 2023 was rescheduled at the petitioner's request.

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

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Kyra Oberg
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner resides with her husband. She has been eligible for the Family Care Program (FCP), considered to be institutionalized under Spousal Impoverishment rules. When a person is determined to be eligible under Spousal Impoverishment, the community spouse is told to transfer

spousal assets to his name only, with exception that the eligible spouse can have assets under \$2,000.

3. In August, 2023, Milwaukee Enrollment Services conducted a renewal review of petitioner's financial eligibility. It was discovered that there were three bank accounts that still had petitioner's name on them, including a [REDACTED] account with \$4,756 and a [REDACTED] savings account held jointly with her husband totaling \$23,653.
4. By a notice dated September 12, 2023, the agency informed petitioner that Medical Assistance (MA) would end October 1 because assets were over the limit. The discontinuance of MA would negatively impact petitioner's FCP eligibility as well.
5. An appeal was filed September 29, 2023. Benefits were continued pending this decision.
6. The [REDACTED] account was closed. Petitioner's husband opened a new account there in his name only. He also transferred \$3,000 from the [REDACTED] account to the new [REDACTED] account. As of the hearing date petitioner's accounts had balances below \$2,000. She had no other assets affecting eligibility.

DISCUSSION

The federal Medicaid Catastrophic Coverage Act of 1988 (MCAA) included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility including he FCP, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat., §49.455(1).

When initially determining whether an institutionalized spouse is eligible for MA, county agencies are required to review the combined assets of the institutionalized spouse and the community spouse. MA Handbook, Appendix 18.4.1. All available assets owned by the couple are to be considered. Homestead property, one vehicle, and anything set aside for burial are exempt from the determination. The couple's total non-exempt assets then are compared to an "asset allowance" to determine eligibility.

The asset allowance for this couple was set at a certain number. MA Handbook, App. 18.4.3, which is based upon Wis. Stat., §49.455(6)(b). \$2,000 (the MA asset limit for the institutionalized individual) is then added to the asset allowance to determine the asset limit under spousal impoverishment policy. If the couple's assets are at or below the determined asset limit, the institutionalized spouse is eligible for MA. If the assets exceed the above amount, as a general rule the spouse is not MA eligible.

Petitioner was found eligible for MA under the spousal impoverishment rules. Once that occurs, an important provision kicks in. The community spouse must transfer all assets to himself except for up to \$2,000 which can be retained by the eligible spouse. See MA Handbook, App. 18.4.6.1. I think petitioner's husband did not understand that requirement, and their grandson helped them after the appeal was filed. At the hearing he provided evidence that petitioner's assets are now below \$2,000 and that the rest of the funds have been put in her husband's name. I thus will order that petitioner's MA be continued.

If [REDACTED] has questions or needs other verification (in particular of property owned in Mississippi), she can follow up, but at this point I will order that eligibility remain open.

CONCLUSIONS OF LAW

Petitioner’s assets have been reduced below \$2,000 in order to continue MA eligibility under Spousal Impoverishment rules.

THEREFORE, it is ORDERED

That the matter be remanded to the agency with instructions to continue petitioner’s MA eligibility under Spousal Impoverishment rules with assets confirmed to be below \$2,000. The action shall be taken within 10 days 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

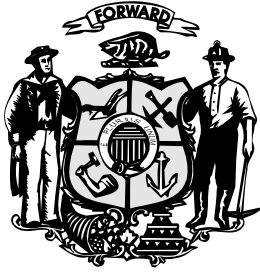
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 19th day of December, 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 December 19, 2023.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability