



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of



**DECISION**  
Case #: MGE - 211422

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**PRELIMINARY RECITALS**

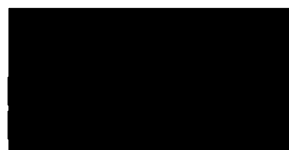
Pursuant to a petition filed on December 18, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services regarding Medical Assistance (MA), a hearing was held on January 31, 2024, by telephone.

The issue for determination is whether the agency correctly counted petitioner's assets for September and October 2023 and correctly found petitioner ineligible for Medicaid.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By: Dana Lee

La Crosse County Department of Human Services  
300 N. 4th Street  
PO Box 4002  
La Crosse, WI 54601

**ADMINISTRATIVE LAW JUDGE:**

Beth Whitaker  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a 84 year old resident of Monroe County.
2. On September 7, 2023 petitioner began residing in a nursing home.
3. On October 27, 2023, petitioner submitted an application for Wisconsin Medicaid for the Elderly, Blind or Disabled, requesting that the application be backdated one month.
4. In her application petitioner reported as assets an irrevocable burial trust established in 2017 and a checking account .
5. Petitioner provided documentation of an Irrevocable Funeral Trust Agreement costing \$7,349.67, entered into on July 14, 2017.
6. On November 6, 2023, the agency issued to petitioner an About Your Benefits notice, informing her that effective December 1, 2023, petitioner was enrolled in Medicare Savings Program and was ineligible for Medicaid benefits because her assets exceeded the program limit.
7. On November 22, 2023, petitioner was discharged from nursing home care.
8. On December 4, 2023, the petitioner submitted evidence to the agency that on November 21, 2023, petitioner cashed out the burial trust and purchased irrevocable burial insurance assigned to [REDACTED]
9. The agency treated the new information as a reapplication for benefits with a request for a three month backdate.
10. On December 14, 2023, the agency issued to petitioner an About Your Benefits notice, informing her that effective November 1, 2021 petitioner was enrolled in Nursing Home Long Term Care with a monthly cost of \$963.40 and effective December 1, 2023, petitioner was enrolled in Medicaid. The decision was based on income of \$1138 and \$0 counted assets.

### DISCUSSION

The issue for hearing is whether the agency correctly counted a portion of the value of an irrevocable funeral trust resulting in a determination that petitioner's assets exceeded the program limit for September and October 2023. Petitioner does not appeal any aspect of the determination of eligibility for November or December 2023.

A single individual applying for Medicaid benefits must have less than \$2000 in countable assets to be eligible for benefits. Wis. Stats., § 49.47(4)(b)3g; Medicaid Eligibility Handbook (MEH), § 39.4. In its determination dated November 6, 2023 the agency denied the Medicaid application because it found petitioner's assets exceeded the program limit. The agency counted as assets a checking and savings account and \$7,349.67 in burial assets. It relied on Medicaid Eligibility Handbook (MEH) 16.5.1 to count the portion of the irrevocable burial trust exceeding \$4,500. This resulted in counted assets in the amount of \$2,967.65, which exceeded the counted asset limit of \$2,000.

MEH 16.5.1 states, in relevant part:

Per Wisconsin law, when a person makes a pre-need agreement with a funeral provider to purchase funeral or burial products and services (not including burial spaces), all payments made under the agreement are trust funds, including interest and dividends, until the person's death. For Medicaid purposes, Wisconsin law stipulates that such trusts may be made irrevocable as to the first \$4,500 of the funds paid under the agreement. The irrevocable amount of such a trust is referred to as an irrevocable burial trust and is an exempt asset. If the total value of an otherwise irrevocable pre-need agreement with a funeral provider exceeds \$4,500, the amount over \$4,500 is revocable and is a countable asset. Interest and dividends, if any, are exempt only if they accrue to irrevocable burial trusts and the trust agreement specifies that they are irrevocable.

Petitioner's representative testified credibly that the entirety of the irrevocable burial trust was unavailable to petitioner and should not be counted as an asset. She expressed that it is unfair to count it because it is not available. She said that petitioner and her family acted in good faith and that petitioner had no house, car or other assets and should not be denied because of an irrevocable trust that she set up years ago just to make sure she could have a funeral. She also testified credibly that petitioner's family tried to take care of everything financially rather than apply for benefits.

Petitioner's representative did not dispute any aspect of the agency's calculations, rather she disagrees with exempting only \$4,500 of the burial trust. The agency has no discretion to make the determination that she requests. The relevant rule in the MEH are clear. The agency agrees that value of the burial trust in question was unavailable to petitioner and was intended to be irrevocable. It must apply the rules, which limit the value of an irrevocable burial trust that may be exempted to \$4,500. I find that the agency applied the law correctly in this matter.

While I sympathize with petitioner's position, I also lack the discretion to alter this determination. It is the long-standing policy of the Division of Hearings & Appeals that its assigned administrative law judges do not possess equitable powers, and cannot base a ruling upon an idea of what is deemed fair. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, she is not eligible; no exception applies, and I am without any equitable powers to direct any remedy beyond the remedies available under law. Because petitioner's countable assets exceeded \$2,000 from during September and October 2023, I must uphold the agency's decision.

As stated by the agency representative at hearing, petitioner's representative is advised to contact the agency regarding this matter to determine whether some other action may be taken that is favorable to petitioner.

### CONCLUSIONS OF LAW

The agency correctly limited the asset exemption applied to petitioner's irrevocable burial trust to \$4500, based on MEH 16.5.1, correctly treated the additional value as revocable and counted \$2,967.65 as assets resulting in assets above the \$2,000 limit. The agency correctly found petitioner ineligible for Medicaid for September and October 2023.

**THEREFORE, it is**

**ORDERED**

That the petition for review 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, 5<sup>th</sup> 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).

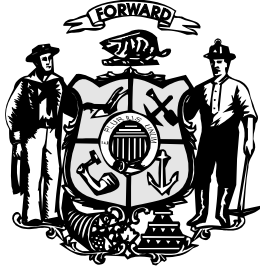
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 1st day of February, 2024



\s \_\_\_\_\_

Beth Whitaker  
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 February 1, 2024.

La Crosse County Department of Human Services  
Division of Health Care Access and Accountability