



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MGE - 209717

PRELIMINARY RECITALS

Pursuant to a petition filed on August 8, 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 30, 2023, by telephone. The hearing was initially set for September 13, 2023, but was rescheduled at Petitioner’s request. The hearing was then set for October 18, 2023, but was again rescheduled per Petitioner’s request and ultimately held on November 30, 2023.

The issue for determination is whether the agency correctly denied Petitioner’s application for MA due to lack of verification and due to Petitioner being over the asset limit.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Carolyn Mahan
BY Your Side Care Management
PO Box 132
Jackson, WI 53037-0132

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:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Milwaukee County.
2. On May 5, 2023, Petitioner submitted an application for MA. The agency questioned a \$17,248.00 federal deposit that Petitioner received. Petitioner reported that was a Veteran Affairs back payment. The agency requested verification of that deposit as well as verification regarding a burial trust.
3. On July 10, 2023, the agency issued a notice denying Petitioner's application for MA because they had not received all of the requested verification regarding Petitioner's burial trust and further Petitioner was over the asset limit due to the Veteran Affairs deposit.
4. On August 15, 2023, the agency received information regarding the funeral irrevocable trust from funeral director [REDACTED]. [REDACTED] confirmed the amount of the urn and casket, \$369.00 and \$1595.00, respectively. The agency used this information to update the irrevocable trust burial amount to \$8,759.00. The agency noted that per policy, the first \$4500.00 of such trusts is exempt. The agency also updated the case with verification of the bank account with the Veteran Affairs deposit. The agency noted that such deposits are counted as assets when received and do not qualify as retroactive aid. The agency noted that Petitioner's account in February 2023 was \$19,993.71, in March 2023 it was \$8994.28, in April 2023 it was \$2259.00, and in May 2023 the account was at \$2259.00.
5. On August 16, 2023, the agency sent a second notice to Petitioner denying her application for MA. The notice stated that Petitioner had not supplied all of the requested asset verification. Further, the notice stated that Petitioner's bank account was over the asset limit.
6. Petitioner's representative filed an appeal of the MA denial.

DISCUSSION

To be eligible for "SSI-related Medicaid", an unmarried individual may not own countable assets in excess of \$2,000. Medicaid Eligibility Handbook (MEH) § 39.4.1. Applicants must provide verification of countable assets to the agency. MEH § 20.3.5. The agency must notify the applicants of that obligation and must provide them with at least ten days to produce the requested verification. MEH § 20.3.5. When an applicant fails to produce the requested verification, the agency must deny benefits unless the individual does not have the power to produce the verification or if the verification cannot be timely obtained even with the agency's assistance. MEH §§ 20.1.4 and 20.8.3.

In this case, the agency explained that Petitioner verified some but not all of the information regarding a burial trust. Further, the agency noted that Petitioner had received a large deposit from Veteran Affairs that put her over the asset limit.

During the hearing, Petitioner's representative testified that they consulted specifically with a funeral director who stated that he, "knew how to create a burial trust that would comply with Medicaid requirements." Petitioner's representative stated that they relied on this funeral director to do so. However, Petitioner's representative stated that the burial trust was accidentally labeled as revocable, when it was not. Petitioner's representative spent the majority of the hearing addressing whether the burial trust should have been counted as an asset.

The agency representative testified that there were two separate issues with the MA application. First, they had not received timely verification regarding the burial trust. Second, Petitioner was over the asset

limit because she had received a large deposit from Veteran Affairs, which put her bank account over \$2000, which was the asset limit. The agency representative noted that, after this appeal was filed, they did receive the requested burial trust information and updated the case. However, Petitioner's application still failed as Petitioner was over the asset limit.

Petitioner received a payment from Veteran Affairs in January 2023, which put her bank account at \$19,993.71 in February 2023. Per MEH § 16.7.11.4, retroactive aid and attendance payments from Veteran Affairs are an exempt asset through the month after month of receipt. Therefore, if Petitioner received a deposit from Veteran Affairs in January 2023, that payment would be exempt through February 2023, which is the month after the month of receipt. In March 2023 then, the money in Petitioner's account would no longer be exempt. In March 2023, Petitioner's bank account was at \$8,994.28 and remained over \$2000 through the time of application, May 2023. Since Petitioner's account was over the asset limit, the agency correctly denied her MA application.

Petitioner's representative testified that without MA coverage, Petitioner's provider will not receive \$60,000 in services rendered to Petitioner prior to Petitioner passing away. A financial representative for Petitioner's provider testified that they are a small facility and if they do not receive this money, they would be taking a "big hit financially" from which they may not recover. In essence, Petitioner's provider is making an equitable argument.

However, I do not have any authority to make decisions based on equity or fairness. I am required to follow the rules and regulations as written without any ability to alter the outcome due to dire circumstances. It is the long-standing policy of the Division of Hearings and Appeals that the assigned administrative law judges do not possess equitable powers. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). As such, I cannot issue a decision couched in terms of fairness. This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. I am without any equitable powers to direct any remedy beyond the remedies available under law.

CONCLUSIONS OF LAW

The agency correctly denied Petitioner's application for MA because her assets were over the asset limit to be approved.

THEREFORE, it is

ORDERED

That this 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.

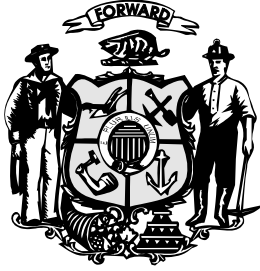
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 5th day of January, 2024

\s _____
Nicole Bjork
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 January 5, 2024.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability
carolyn@byyoursidecm.com