



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
c/o Philip Miller, Attorney
Weiss, Berzowski, Brady, L L P
700 North Water Street Suite 1500
Milwaukee, WI 53202

DECISION

MDV-67/105

685

PRELIMINARY RECITALS

Pursuant to a petition filed July 21, 2009, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health & Human Services in regard to Medical Assistance (MA), a hearing was held on September 14, 2009, at Waukesha, Wisconsin.

The issues for determination are (1) whether the county agency properly denied petitioner's request for MA for the period from April 1, 2009 through May 8, 2009 due to divestment and (2) whether the county agency properly denied petitioner's request for MA for June 2009.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
c/o Philip Miller, Attorney
Weiss, Berzowski, Brady, L L P
700 North Water Street Suite 1500
Milwaukee, WI 53202

Petitioner represented at the hearing by:

Attorneys Philip Miller and Caitlyn
Beaudry, Weiss, Berzowski, Brady, LLP
Renee Bitar, Authorized Representative

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53702

By: Karen Pearson, ESS, ESS
Waukesha County Health & Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Catherine G. Demski, Attorney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On February 27, 2009, petitioner applied for MA but was denied because she had assets over the limit. A negative notice was sent to petitioner on March 31, 2009 indicating the same. (Exhibit 1).
3. No appeal was made of the February 27, 2009 application denial.
4. On February 27, 2009, \$13,735.95 was transferred from petitioner to two separate individuals and was a divestment. On March 21, 2009, \$5,872.34 was returned, leaving a net divestment of \$7,863.61. (See Exhibits 4 and 8).
5. Petitioner applied for MA again on April 28, 2009.
6. On or about June 24, 2009, petitioner sold her home and received proceeds from the sale that put her over the asset limit for MA.
7. On July 14, 2009, the county agency issued three notices of decision to petitioner. The first notice informed petitioner that she was not eligible for MA for the period from April 1, 2009 through May 8, 2009 due to a penalty period for divestment of \$7863.60. (Exhibit 4).
8. The second notice informed petitioner that her application for MA was approved for the time period between May 9, 2009 and May 31, 2009. (Exhibit 5).
9. The third notice informed petitioner that she was ineligible for MA beginning June 1, 2009 because she had assets over the limit when she sold a property. (Exhibit 6).
10. Petitioner appealed the July 14, 2009 decision to deny her benefits.

DISCUSSION

There are two issues that came to light at the hearing in this matter. First, it must be determined whether the county agency properly determined the penalty period begin date for petitioner's application for MA. Second, it must be determined whether petitioner should have been determined eligible for June 2009 benefits because she would have been eligible had her application been processed in a timely manner.

As to the first issue, divestments that occurred after January 1, 2009 are subject to a different penalty period begin date than divestments that occurred before that date. *Operations Memo 09-01*, January 7, 2009, p. 1. According to the new policy, the penalty period begin date for applicants is the date on which the individual is institutionalized, has applied for Medicaid, and is otherwise eligible for Medicaid except for the imposition of the penalty period. *Id.* at p. 3. I agree with the county agency that, in this case, that date is April 1, 2009. On April 1, 2009, but for the divestment that occurred, the petitioner would have been eligible for MA.

Counsel for petitioner has argued that the penalty period should have begun back at the time of the initial application and not April 1, 2009. Under the old law, that may have been true, as the

penalty period began on the date of the divestment (here, February 2009), but under the new rule, it seems clear that the penalty period cannot begin until there has been an application that was approved for benefits.

Here, while it is true that petitioner made her first application for benefits in February, that application was denied due to having assets over the limit. At the hearing, the petitioner's representative asserted that the February application was mishandled because though she reported that the funds had been divested, the county worker convinced her to categorize the money as funds that had been set aside for petitioner's care so as to avoid a divestment penalty period. Therefore, it is petitioner's position that the penalty period should have begun in February, 2009. Petitioner's argument is not relevant at this time because the February 2009 application denial was never appealed. I am without jurisdiction to consider the merits of a case if it was not timely appealed. Wis. Stat. § 49.45(5); see also Wis. Admin. Code § H A 3.05(3). Thus, I may only consider the April 2009 application. The county agency correctly determined the penalty period to begin on April 1, 2009, which is when benefits would have started but for the divestment determination.

As to the issue of June 2009 benefits, I agree with petitioner that petitioner would have been eligible for benefits in June had her application been timely processed. According to the handbook, applications for MA are to be processed within thirty (30) days. *Medicaid Eligibility Handbook (MEH)*, § 2.7.1. Therefore, petitioner's application should have been processed before June 1, 2009. Petitioner did not receive assets from the sale of her home until the end of June. At that time, petitioner would have had ten (10) days to report the sale of her home as a change in her assets. *MEH*, § 12.1. Thus, the earliest that the change could have taken effect had her application been processed in a timely manner would have been July 1, 2009. On July 1, 2009, her case would have closed due to having assets over the limit. When benefits have been incorrectly denied, they must be restored from the date of the incorrect denial through the time period that petitioner would have remained eligible. *MEH*, § 22.2.7. To deny petitioner benefits for June 2009 simply because the agency did not follow its own rules in processing the application would be grossly unjust, and more importantly, it would run contrary to the law and policies put in place to ensure the expeditious processing of applications. The county agency has incorrectly denied benefits for June 2009.

CONCLUSIONS OF LAW

1. The county agency correctly determined that petitioner's penalty period began on April 1, 2009 and extended through May 8, 2009.
2. The county agency incorrectly determined that petitioner was ineligible for MA for June 2009.

NOW, THEREFORE it is

ORDERED

That this matter is remanded to the county agency to reinstate petitioner's MA for June 2009. This action shall be taken within ten (10) days of the date of this decision. In all other respects, this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to Circuit Court, the Respondent in this matter is the Department of Health Services. Appeals must be served on the Office of the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53702

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53

Given under my hand at the City of
Milwaukee, Wisconsin, this _____
day of _____, 2009

Catherine G. Demski, Attorney
Administrative Law Judge
Division of Hearings and Appeals

c:

