



FH  
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STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of:



DECISION  
MRA/159882

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PRELIMINARY RECITALS

Pursuant to a petition filed August 14, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Juneau County Department of Human Services [“County”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on October 14, 2014. At petitioner’s record of the October 14<sup>th</sup> Hearing was held open until October 21, 2014.

The issue for determination is whether petitioner’s Tax Sheltered Annuity [“TSA”] and farm may be counted as assets for purposes of MA.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED] (not present at October 14,  
2014 Hearing)

c/o [REDACTED]

Represented by:

Brenda R. Haskins  
Attorney  
Haskins Short Law, LLC  
3866 Johns Street  
Madison, Wisconsin 53714

Respondent:

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

By: Kay Willard, ES Lead Worker

Juneau County Department of Human Services  
Courthouse Annex  
220 E. LaCrosse Street  
Mauston, WI 53948

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 71 years old) is a resident of Juneau County, Wisconsin.
2. On or about July 7, 2014 petitioner applied with the County for MA and requested backdated eligibility to April 1, 2014.
3. Petitioner owns a TSA in the amount if approximately \$29,000.
4. Due to his health status (he entered a nursing home on March 17, 2014 and remains there) petitioner himself did not have the ability to get access to the TSA.
5. On March 4, 2014 petitioner's wife begin the process to get legal access to the TSA; petitioner's wife was not able to get legal access to the TSA until May 2, 2014.
6. Petitioner and his wife own an operating farm of approximately 180 acres that has been in his wife's family since 1966 and has been operated as farm since that time; they continue to own the farm but it is now operated by another person through a rental agreement; the farm income is reported by petitioner and his wife using federal income tax form 1040 Schedule F (*Profit or Loss From Farming*); their federal Schedule F for both 2011 and 2012 show that the farm operated at a loss.

DISCUSSION

An asset is considered not to be available when the owner or owner's representative documents that the asset will not be available for 30 days or more. *Medicaid Eligibility Handbook* ["MEH"] Chapter 16.2.1. In this case petitioner has documented that, although his wife begin the process to get legal access to the TSA on March 4, 2014, she could not get legal access to the TSA until May 2, 2014. This is more the 30 days. Therefore, the TSA was not an available asset until May 2, 2014. Whether the TSA should be counted as an asset beginning May 2, 2014 is an open question that may be addressed by the County and petitioner's attorney when the County redetermines eligibility.

In Elderly, Blind, and Disabled ["EBD"] MA cases, such as this one, all real and non-real business property is exempt if the business is currently operating<sup>1</sup> for the self-support of the EBD individual. There is no profit test. MEH §§ 15.6.3.1 & 16.9.2.; See also, *Social Security Program Operations Manual System (POMS)* SI 01130.501.A.2., SI 01130.501.C.3.a. & RS 01802.002.A.; and, *Crow v. Wisconsin Department of Health Services*, No. 13-CV-0877 (Wis. Cir. Ct. Kenosha County January 10, 2014). Therefore, the farm is not a countable asset for purposes of MA.

It is not necessary to consider petitioner's alternative request that his wife's *Community Spouse Resource Allowance* ["CSRA"] (also sometimes called the *Community Spouse Asset Share* ["CSAS"]) be increased.

The County argues that the farm is a countable asset in light of BEPS/DFS Operations Memo No: 13-38, Date: 11/07/2013 (*Divestment and other Medicaid Asset Policy Changes Pursuant to the 2013-2015 Budget*). However, nothing in that policy document addresses the business property exemption found in MEH 15.6.3.1. The section cited by the County<sup>2</sup> addresses increasing the CSRA through the Fair Hearing process -- not the business property exemption.

<sup>1</sup> A business is operating when it is ready to function in its specific purpose. The period of operation begins when the business first opens and generally continues uninterrupted up to the present. A business is operating even if there are no sales and no work is being performed. Thus a seasonal business operates in the off season unless there's been a significant change in circumstances. MEH 15.6.1.3.

<sup>2</sup> *Calculating An Increased Resource Allocation*, found on page 4.

**CONCLUSIONS OF LAW**

For the reasons discussed above, for purposes of MA petitioner's TSA was not an available asset until May 2, 2014 and petitioner's farm may not be counted as asset.

**THEREFORE, it is**

**ORDERED**

That this matter be REMANDED to the County and that, within 10 days of the date of this *Decision*, the County redetermine petitioner's eligibility for MA in accordance with this *Decision* and issue all MA benefits to which petitioner is otherwise entitled retroactive to April 1, 2014.

**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, 5005 University Avenue, Suite 201, 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, Madison, Wisconsin 53703, 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 27th day of October, 2014

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lsSean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals