



FH  
[REDACTED]

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

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In the Matter of

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

**DECISION**  
Case #: MGE - 216363

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on December 18, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dodge County Human Services regarding Medical Assistance (MA), a hearing was held on February 4, 2025, by telephone.

The issue for determination is whether the agency correctly denied the petitioner's Medicaid for the month of October 2024.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703  
By: Nathan Whitaker  
Dodge County Human Services  
199 Cty Rd DF  
Juneau, WI 53039

**ADMINISTRATIVE LAW JUDGE:**

Kate J. Schilling  
Division of Hearings and Appeals

## **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is an 86 year old resident of Jefferson County. Her daughter is her power of attorney and authorized representative.
2. On September 17, 2024, the petitioner submitted an application for long-term care Medicaid. The petitioner is married; however, her spouse is also in a nursing home. Therefore, the couple is treated as two single individuals for purposes of Medicaid eligibility.
3. Between October 8-15, 2024, verification documents were submitted to the agency for the petitioner's checking and savings accounts and also a life insurance policy.
4. On October 18, 2024, the petitioner's daughter called the agency to inquire about the status of the Medicaid application. The agency staff informed her that her mother's life insurance policy had a cash value of \$3,967.46; and therefore, she was over the \$2,000 asset limit for Medicaid. However, the agency staff (mistakenly) told the petitioner's daughter that she had one year to bring her assets under the \$2,000 asset limit.
5. On November 6, 2024, an agency worker noticed the misinformation in the petitioner's case file and called the petitioner's daughter to clarify that she did not have one year to get under the \$2,000 asset limit. Since the petitioner's spouse was also in a nursing home, they each had a \$2,000 asset limit for Medicaid eligibility, and there were no spousal impoverishment protections.
6. On November 27, 2024, the petitioner's daughter provided verification to the agency that she had cashed out the life insurance policy and made a payment of \$4,000 to the nursing home where the petitioner was living.
7. On November 29, 2024, the agency approved the petitioner's long-term care Medicaid as of November 1, 2024.
8. The petitioner has a monthly Medicaid patient liability of \$586 towards her cost of care.

## **DISCUSSION**

Medicaid is a state/federal program that provides health coverage for Wisconsin residents that are elderly, blind, or disabled (EBD) or receive Wisconsin Well Woman Medicaid. Medicaid is also known as Medical Assistance, MA, and Title 19. The EBD fiscal group's assets must be within the appropriate categorically needy or medically needy asset limit before any member of that group can qualify for Medicaid. EBD fiscal groups who have assets in excess of the appropriate EBD medically needy asset limit are ineligible for Medicaid. See *Medicaid Eligibility Handbook (MA Handbook)* §1.1.1 and 1.1.3.1., available online at <http://www.emhandbooks.wi.gov/meh-ebd/>.

An individual is financially eligible for EBD Medicaid if the total value of all non-exempt liquid assets does not exceed \$2,000. Wis. Stats. §49.47(4)(b). The clear, unambiguous language of both Wis. Stat. §49.47(4)(b), and Wis. Admin. Code §DHS 103.08(1), states that eligibility cannot exist prior to the date on which all eligibility requirements are met. Until the actual date an individual's liquid assets fall below \$2,000, an individual is ineligible for Medicaid.

Generally speaking, a home, one vehicle, Medicaid-compliant burial assets, and personal belongings are exempt assets and do not count towards the asset limit. Life insurance policies are countable assets when the total face value exceeds \$1,500. *MA Handbook* §16.7.5. Here, the face value of the policy was

\$5,256 and the cash value was \$3,967.46; therefore, the amount of the cash value is considered an available asset per Medicaid policy. *MA Handbook* §16.7.5.

The petitioner applied for long-term care Medicaid on September 17, 2024. The application pended while the petitioner's daughter obtained verification of the checking account, savings account, and life insurance policy statement. On or about October 18, 2024, the agency determined that the petitioner was over the \$2,000 asset limit for Medicaid due to the cash surrender value of her life insurance policy being \$3,967.46. Due to a misunderstanding of policy, the agency staff mistakenly told the petitioner's daughter that she had a full year to bring her mother's assets down to \$2,000 or less. The petitioner's daughter testified at the hearing that she was very busy at the time this was occurring, and since she believed that she had a full year to remedy it, she did not prioritize making the change. She further testified that had she known that her mother was not eligible for long-term care Medicaid until she was under the \$2,000 asset limit, she would have immediately addressed the issue so that her mother would be eligible for Medicaid in October.

The agency does not dispute that the petitioner's daughter was given incorrect information over the phone on October 18, 2024, as notes in the case comments confirm this. Agency staff called the petitioner's daughter on November 6, 2024, to clarify the misinformation and to explain that the spousal impoverishment protections no longer applied in this case as the husband and wife were now both living in nursing homes. Therefore, they were each subject to an immediate \$2,000 asset limit. *MA Handbook* §18.1. Within two weeks of receiving this phone call, the petitioner's daughter cashed out the life insurance policy and paid \$4,000 towards the outstanding bill at the nursing home to bring her mother's assets down below \$2,000. She provided verification of these actions to the agency on November 25, 2024. Medicaid policy is that asset eligibility is determined on the last day of the month.

If he or she was asset eligible on the last day of the month, he or she is eligible for the whole month.

*Medicaid Eligibility Handbook* § 2.8.2. Therefore, by providing verification of eligibility on November 25, 2024, the petitioner was eligible and approved for Medicaid as of November 1, 2024.

The petitioner is understandably frustrated by the initial misinformation and missing out on October Medicaid coverage. However, there is no provision in the law for me to grant an exception or waiver of the asset limit. "An agency or board created by the legislature has only those powers which are expressly or impliedly conferred on it by statute. Such statutes are generally strictly construed to preclude the exercise of power which is not expressly granted. [citation omitted]" *Browne v. Milwaukee Board of School Directors*, 83 Wis.2d 316, 333, 265 N.W.2d 559 (1978).) Thus, as an administrative law judge, I do not have authority to render a decision on the basis of fairness or equity.

The petitioner may wish to work with the income maintenance agency to request that her \$586 monthly Medicaid patient liability (cost of care) be offset to repay the outstanding balance at the nursing home. This was briefly discussed during the hearing and was referred to by the agency as a "deviation request." If she has not already done this, the phone number to call the Capital Consortium is (888) 794-5556.

### **CONCLUSIONS OF LAW**

The agency correctly denied the petitioner's long-term care Medicaid for October 2024 as she was over the \$2,000 asset limit.

**THEREFORE, it is**

**ORDERED**

That the petition for review is hereby 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.

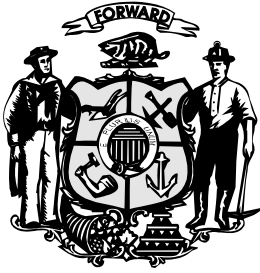
**APPEAL TO COURT**

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 28th day of February, 2025

\s \_\_\_\_\_  
Kate J. Schilling  
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 28, 2025.

Dodge County Human Services  
Division of Health Care Access and Accountability