



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: MGE - 217517

PRELIMINARY RECITALS

Pursuant to a petition filed on March 12, 2025, 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 April 23, 2025, by telephone. The hearing record was left open for two weeks following the hearing for the submission of additional documentation by the petitioner.

The issue for determination is whether the agency correctly denied the requested backdate to November 1, 2024 of the petitioner's Medicaid application which was submitted on January 29, 2025

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: Dana Lee

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

ADMINISTRATIVE LAW JUDGE:

Kate J. Schilling
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 71 year old resident of Barron County. The petitioner was previously under a guardianship order in the state of Iowa; however, he later moved to Wisconsin and had his guardianship transferred to Wisconsin.
2. On November 1, 2024, [REDACTED] was appointed by the court as the petitioner's successor guardian of person and estate. (The petitioner's sister had previously been his guardian.) He was also court ordered to be under a protective placement.
3. On November 4, 2024, the petitioner moved into a nursing facility in Clark County due to the need for increased care and risk of elopement.
4. On November 4, 2024, the petitioner's guardian contacted the petitioner's bank in Iowa and sent a copy of the guardianship orders. The guardian requested to close out the bank account in Iowa and move the petitioner's funds to a bank in Wisconsin to be managed by the new guardian.
5. On November 5, 2024, the petitioner's guardian dropped off an application at the Social Security Administration to become his new representative payee and be able to manage his Social Security benefits.
6. After several contacts back and forth, on November 6, 2024, the bank in Iowa notified the petitioner's new guardian that it would not allow them to access the petitioner's funds at that bank until it received documentation that the guardian was appointed as the representative payee from the Social Security Administration.
7. On December 2, 2024, the petitioner's legal guardian received confirmation from the Social Security Administration that it was approved as the petitioner's representative payee as of November 26, 2024. The guardian immediately shared this information with the bank in Iowa.
8. On December 5, 2024, the bank in Iowa agreed to recognize the petitioner's guardianship authority and representative payee status, and to close the bank account in Iowa and issue a check to the guardian for the \$16,451.37 in the Iowa bank account.
9. On December 10, 2024, the guardian deposited the check for \$16,451.37 from the Iowa bank into a new checking account for the petitioner. The petitioner's Social Security retirement benefit had also been deposited into this account on December 3, 2024.
10. As of December 31, 2024, the petitioner's new bank account in Wisconsin had a balance of \$13,243.46.
11. On January 29, 2025, the petitioner submitted an application for Institutional Medicaid requesting a two month backdate to November 1, 2024. On January 29, 2025, a check for \$10,600 was written to the petitioner's nursing facility to pay towards his outstanding balance. A check for \$668 was also sent to the guardian ad litem for court ordered GAL fees in his guardianship hearing. A check for \$350 was also written for court-ordered guardianship fees. The ending balance in his checking account was \$1,962.43.
12. The agency processed the petitioner's application and sent out requests for verification of assets. These notices were sent out on February 10, 2025, with the verifications due by March 3, 2025.

13. On February 26, 2025, the agency determined that the petitioner was over the asset limit for Institutional Medicaid in November and December 2024. A notice was sent to the petitioner on February 27, 2025, stating that the requested coverage for November and December 2024 was denied.
14. On March 7, 2025, the agency sent a notice to the petitioner stating that he was over the asset limit for Institutional Medicaid for December 2024; however, he was approved for Institutional Medicaid as of January 1, 2025, and moving forward with a patient liability of \$1,178 per month after taking into consideration monthly court-ordered guardianship payments.
15. On March 14, 2025, the petitioner's legal guardian submitted a nursing home repayment agreement to the agency to repay the petitioner's outstanding nursing home balance. The agency approved the agreement to offset the petitioner's monthly patient liability to the nursing home as of April 1, 2025, to pay the remaining \$6,484 balance from 12/9/2024 through 12/31/2024.

DISCUSSION

To be eligible for "Elder / Blind / Disabled Medicaid" ("EBD Medicaid"), a category that includes "Nursing Home Long Term Care" (also referred to as "Institutional Medical Assistance"), an unmarried individual must meet certain financial eligibility requirements. The countable asset limit for Institutional Medical Assistance, sometimes referred to as nursing home long term care, is \$2,000 for an unmarried individual. Medicaid Eligibility Handbook (MA Handbook) §§27.5.1 and 39.4.1. Asset amounts are determined as of the last day of the month.

Assets

A person's asset eligibility in a backdate month is determined by whether or not he or she had excess assets on the last day of the month. If he or she had excess assets on the last day of the month, he or she is ineligible for the entire month. If he or she was asset eligible on the last day of the month, he or she is eligible for the whole month.

MA Handbook §2.8.2. Medicaid can be backdated up to three months prior to the date of the application if the applicant would have been eligible for benefits had they applied in that month. *MA Handbook* §2.8.2. In this case, the petitioner requested backdated Medicaid to cover November and December 2024. The agency determined that the petitioner was not eligible for Institutional Medicaid in November and December 2024 as his countable assets were above the \$2,000 program asset limit on the last day of these months.

The petitioner is requesting that his assets be declared unavailable as his prior bank in Iowa would not release the funds to the successor guardian who was appointed by the court on November 1, 2024. The petitioner's guardian provided the guardianship orders to the bank on at least two occasions and attempted to take possession of the funds, as is legally required of a guardian of estate. The county corporation counsel provided legal citations to the guardian regarding its authority as guardian of estate; however, the bank refused to release the funds until the guardian obtained approval by the Social Security Administration to be the petitioner's representative payee. As such, the guardian was unable to spend the \$16,451.37 in the petitioner's bank account until this occurred.

The guardian applied for the representative payee authority on November 5, 2024, and received approval on December 2, 2024. While the guardian did act immediately to close out the Iowa bank account and

establish a Wisconsin bank account, the petitioner remained over the asset limit at the end of December with a balance of \$13,243.46. The guardian spent down the majority of the bank account balance at the end of January 2025 by paying \$10,600 towards the outstanding balance at the nursing facility, \$668 to the guardian ad litem in the guardianship proceeding, and \$350 for monthly court-ordered guardianship fees. The guardian then applied for Institutional Medicaid on January 29, 2025 when there was \$1,962.43 in the petitioner's bank account. The agency ultimately approved the petitioner for Institutional Medicaid retroactive to January 1, 2025.

An asset is only countable if it is available. An asset is available when the following criteria are met:

16.2.1 Assets Availability Introduction

An asset is available when:

1. It can be sold, transferred, or disposed of by the owner or the owner's representative, and
2. The owner has a legal right to the money obtained from sale of the asset, and
3. The owner has the legal ability to make the money available for support and maintenance, and
4. The asset can be made available in less than 30 days.

Consider an asset as unavailable if **either**:

1. The member lacks the ability to provide legal access to the assets, and
2. No one else can access the assets, and
3. A process has been started to get legal access to the assets.

Or, when the owner or owner's representative documents that the asset will not be available for 30 days or more, and the process has been started to obtain the assets.

Use the criteria above to determine whether an asset was available in a backdate month unless an asset is deemed unavailable in the month of application because it will not be available for 30 or more days (considered unavailable in any or all backdate months).

MA Handbook at §16.2.1. An asset is not available if the member lacks the ability to provide legal access to the assets.

I agree with the petitioner's guardian that due to the Iowa bank's refusal to acknowledge the legal authority of a Wisconsin guardian of estate, it lacked the ability to access or spend the petitioner's funds prior to December 2, 2024, when it received notification that it had been approved as the petitioner's representative payee. However, after December 2, 2024, the funds were available to the guardian. There is no basis to find that the funds were unavailable in December as the guardian had nearly the full month to spend the money and pay outstanding bills. As the petitioner was over the \$2,000 asset limit on the last day of the month in December, he is ineligible for coverage that month.

CONCLUSIONS OF LAW

1. The petitioner's funds were unavailable between November 1, 2024 and December 2, 2024, as the bank in Iowa would not release the petitioner's funds until his successor guardian was approved as his representative payee by the Social Security Administration.

2. Due to the unavailability of the funds in his bank account for the entire month of November 2024, the petitioner is eligible for Institutional Medicaid for November 2024.
3. The petitioner is not eligible for Institutional Medicaid for December 2024, as his funds were available to his guardian as of December 2, 2024, and he was over the asset limit on the last day of the month.

THEREFORE, it is

ORDERED

That this decision is Remanded to the agency with instructions to find that the petitioner was eligible for Institutional Medicaid for the month of November 2024. The agency shall do this within 10 days of the date of this decision. In all other aspects, the 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.

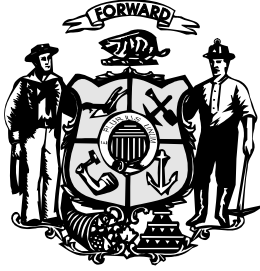
APPEAL TO COURT

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 Madison,
Wisconsin, this 12th day of June, 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 June 12, 2025.

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