



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 - 216346

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on December 19, 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 petitioner is entitled to backdated long-term care Medicaid between March 1, 2024 and July 31, 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: Chandler Zwieg  
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 89 year old resident of Dane County. His daughter is his financial power of attorney and authorized representative for Medicaid.
2. On January 15, 2024, the petitioner was sent a notice that stated that his Medicaid benefits would end on February 29, 2024, if he did not complete a renewal before that date.
3. The renewal was not completed, and the petitioner's Medicaid lapsed as of March 1, 2024.
4. On August 30, 2024, the petitioner submitted an application for Institutional Medicaid and requested a three month backdate back to May 2024.
5. The agency requested verification of the petitioner's checking and savings accounts. The bank accounts reflected the following balances:

<b>Dates</b>	<b>Balance</b>
4/15/24 – 5/12/24	\$15,000.97
5/13/24 – 6/12/24	\$18,056.41
6/13/24 – 7/14/24	\$21,246.85
7/15/24 – 8/12/24	\$23,800.45
8/29/24 - 9/12/24	\$3,822.34

6. On August 10, 2024, the petitioner's daughter wrote a check to the nursing home for \$23,168.55 to bring the petitioner's bank account within the \$2,000 limit and pay towards the outstanding balance.
7. On October 1, 2024, the agency sent a notice to the petitioner stating that he was denied Medicaid and community waiver benefits "as of May 1, 2024" for being over the asset limit.
8. On November 27, 2024, the agency sent a notice stating that the petitioner's Medicaid benefits were approved and would be retroactive back to August 1, 2024.
9. The agency determined that the petitioner has a Medicaid patient liability towards his cost of care of \$3,180.44 per month in 2025.

## **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. Most other assets, including savings and checking bank accounts, are countable assets. *MA Handbook* §§ 16.1 and 16.7. 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 as of the end of August, the petitioner was eligible and approved for Medicaid as of August 1, 2024. (The petitioner's bank account balance was \$3,822.34 at the end of August; however, his monthly income must be deducted from that balance as it counts as income in the month received, not as an asset. *MA Handbook* §§ 16.1 and 15.4.10. The petitioner receives \$2,049 in Social Security retirement and \$1,141.44 from a pension, for a total monthly income of \$3,190.44.)

The petitioner's daughter is his power of attorney for finances, and she handles her father's Medicaid benefits as he is unable to do so himself. She submitted documentation from her own medical professionals relating to her physical and mental health challenges over the past year. She has significant mental health issues which are exacerbated by flareups with her multiple sclerosis, and required hospitalization last year. (Petitioner's Exhibit 1) Furthermore, her neurologist stated that she "has trouble recognizing all aspects of time" as part of her psychiatric conditions. (Petitioner's Exhibit 1) In addition, she has had medication changes throughout 2024 which caused "some cognitive deficits and foginess where she is forgetful and has difficulty remembering deadlines and appointments." (Petitioner's Exhibit 2)

In her appeal letter, the petitioner's daughter is requesting that I make an exception to the rules in order for Medicaid to pay for her father's nursing home care between March 1, 2024 and July 31, 2024. I am unable to do so for two reasons. First, the request is untimely. Denials of Medicaid benefits must be appealed within 45 days of the date of the adverse action. Wis. Stat. § 49.45(5); Wis. Admin. Code § DHS 104.01(5)(a)3; Wis. Admin. Code § HA 3.05(3) The renewal notice was sent out on January 15, 2024, indicating that the renewal had to be completed in February or else benefits would end on February 29, 2024. While I do not have a copy of the termination notice as part of the hearing record, it was likely dated on or about February 19, 2024, at the latest, and would have had an appeal deadline of April 4, 2024. There is no record of an appeal being filed during that timeframe. Additionally, the notice sent to the petitioner on October 1, 2024, addresses the three month backdate request for her August 30, 2024 Medicaid application. This notice states that Medicaid was denied as of May 1, 2024 for being over the asset limit. This determination by the agency had to be appealed by November 18, 2024. The Division of Hearings and Appeals received this appeal on December 19, 2024, presumably in response to the November 27, 2024 notice; however, this most recent notice only references August 1, 2024 and forward.

Secondly, while the petitioner's daughter has provided ample evidence of her physical and mental health challenges over the past year, I do not have authority to grant an exception in this case. There is no provision in the law for a late Medicaid appeal based on good cause, and there is no way for me to waive the asset limit requirements. "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 make an exception or render a decision on the basis of fairness or equity.

The petitioner may wish to work with the income maintenance agency to request that the 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 between March 1, 2024 and July 31, 2024.

**THEREFORE, it is**

**ORDERED**

That the petition 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.

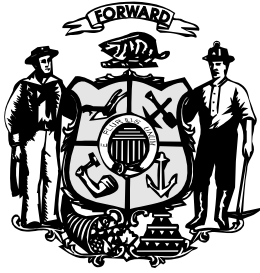
### **APPEAL TO COURT**

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