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

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In the Matter of

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

**DECISION**  
Case #: MNP - 218271

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**PRELIMINARY RECITALS**

A petition was filed on May 8, 2025, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA). The hearing was initially scheduled for June 25, 2025, but was rescheduled to July 2, 2025, and held via telephone.

The issue for determination is whether the petitioner's Institutional Medicaid was correctly terminated on March 5, 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: written appearance by  
Division of Medicaid Services  
PO Box 309  
Madison, WI 53701-0309

**ADMINISTRATIVE LAW JUDGE:**

Kate J. Schilling  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # ) is a 94 year old resident of Iron County. She resides in a skilled nursing facility and was receiving Institutional Medicaid.
2. On March 4, 2025, the Department of Health Services (“Department”) sent a notice to the petitioner that she no longer met the criteria for a nursing home level of care. This notice did not specify a date that the petitioner’s Medicaid coverage would end.
3. On March 5, 2025, the petitioner’s Medicaid coverage at the nursing facility lapsed.
4. On April 22, 2025, the Department of Health Services sent a notice to the petitioner that her nursing home level of care had expired.
5. On May 22, 2025, the petitioner’s nursing home level of care was restored after the facility where she lived sent documentation to the Department. However, the Department was only able to backdate the coverage to April 22, 2025. This left a gap of coverage between March 5, 2025 and April 22, 2025.

### **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 individual must meet certain financial and non-financial eligibility requirements. The non-financial eligibility requirements include being age 65 or older, having a disability determination, or being determined legally blind. *MA Handbook* §§ 5.1 and 5.2.1. Additional non-financial eligibility criteria includes being a U.S. citizen or having a qualifying immigration status, being a resident of Wisconsin, and paying any applicable patient liability or cost share towards the cost of care. *MA Handbook* §§ 6.1, 7.3, 11.1.

In this case, the Department determined that the petitioner no longer met a nursing home level of care and did not require 24 hour per day care as provided in a nursing facility. Wis. Admin. Code § DHS 107.09(4)(e) On March 4, 2025, the petitioner was sent a notice which stated that upon her recertification, it was determined that she no longer met a nursing home level of care, and that her needs could be met in a lessor restrictive setting. However, this notice did not provide a date that her coverage would end, nor did it provide a statement that the petitioner had the right to request that her benefits continue while an appeal was pending. Furthermore, this notice did not provide at least 10 days advance notice that the petitioner’s Medicaid benefits would be ending, as is required under both federal and state law. *MA Handbook* §23.1.4.2; 42 CFR § 431.210(a) and (e); see also *Goldberg v. Kelly*, 397 U.S. 254 (1970). Therefore, the notice sent by the Department on March 4, 2025, was an insufficient and invalid notice of termination of benefits.

The notice sent out on April 22, 2025, was also insufficient and invalid for similar reasons as the March 4, 2025 notice. *Id.* The April notice failed to provide a date that the Medicaid benefits would end, other than stating that her level of care for the nursing facility “has expired.” While the notice did provide information regarding appeal rights, it did not notify the beneficiary that she had the right to request that her benefits be continued pending her appeal. Most importantly, this notice was sent out after the petitioner’s Medicaid coverage had already ended.

The petitioner’s Medicaid coverage ended on March 5, 2025. The nursing facility administrator testified at the hearing that they were able to get the petitioner’s Medicaid coverage at the nursing home level of care reinstated on May 22, 2025. The Department was willing to backdate the Medicaid coverage to

April 22, 2025. However, that left a gap of Institutional Medicaid coverage between March 5, 2025 and April 22, 2025, which the petitioner is now appealing.

I agree with the petitioner that the notices sent to her were invalid under state and federal law. *MA Handbook* §23.1.4.2; 42 CFR § 431.210(a) and (e); see also *Goldberg v. Kelly*, 397 U.S. 254 (1970). Therefore, the petitioner is entitled to reinstated Institutional Medicaid benefits retroactive to March 5, 2025.

### **CONCLUSIONS OF LAW**

The notice sent to the petitioner regarding the termination of her Institutional Medicaid benefits was invalid as it failed to provide at least 10 days advance notice prior to the termination date, as required by state and federal law.

**THEREFORE, it is**

### **ORDERED**

That this case is remanded to the Department of Health Services with instructions to reinstate the petitioner's Institutional Medicaid as of March 5, 2025. The agency shall do this within 10 days of the date of this decision, with written notice to the petitioner.

### **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.

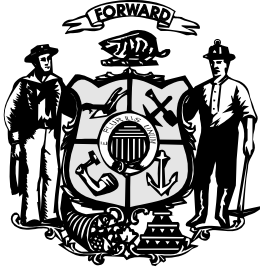
### **APPEAL TO COURT**

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 21st day of July, 2025

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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 July 21, 2025.

Division of Medicaid Services

