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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

Case #: MGE - 219667

PRELIMINARY RECITALS

Pursuant to a petition filed August 19, 2025, under Wis. Stat., §49.45(5), to review a decision by Brown County Human Services to discontinue Medical Assistance (MA), a hearing was held on October 8, 2025, by telephone.

The issue for determination is whether a trust in petitioner's name is an available asset.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Atty. Dayna J. Lefebvre
Becker, Hickey & Poster
222 East Erie St Suite 320
Milwaukee, WI 53202

Respondent:

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

By: Matthew Hurst
Brown County Human Services
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 46-year-old resident of Brown County.
2. Petitioner is disabled and requires daily assistance with cares. He has been eligible for MA and a Community Waivers program for the past several years.

3. In 1997 petitioner's parents were appointed to be his guardians. Soon after, on November 14, 1997, they created a Life and Care Trust using funds derived from a personal injury settlement obtained on petitioner's behalf. The trust document named petitioner's parents as trustees and gave them complete discretion on the use of the trust principal and income, specifically to use for care expenses not covered by private insurance or public assistance. See Article II of the Trust, found in both the agency and petitioner's exhibit packages. The trust could be amended only with approval of a court. See Article IV. It did not provide for its remainder to refund the state for repayment of Medicaid benefits in the event of petitioner's death. See Article X.
4. Petitioner was eligible for MA because he received Supplemental Security Income (SSI) until 2019, when SSI ended due to the receipt of Social Security Disabled Adult Child benefits. At that point the county agency determined that the trust was an available asset, but because petitioner's income was below the BadgerCare Plus (BC+) MA limit, he was eligible for that program, which does not consider assets in the eligibility determination.
5. In 2020, petitioner became eligible for Medicare, which resulted in the cessation of BC+. However, MA continued for petitioner because of the Covid emergency policy that allowed recipients to keep MA eligibility.
6. Finally, in August, 2025, the county reviewed petitioner's MA and Medicare Savings Program eligibility. By a notice dated July 28, 2025, it informed petitioner that MA, Medicare Savings, and Community Waivers would end September 1, 2025 because assets were over the limit. Benefits in all three programs were continued pending this decision.

DISCUSSION

Petitioner is eligible for Community Waivers if he is eligible for MA. His current MA eligibility falls within the special status Disabled Adult Child (DAC) MA subprogram. DAC individuals are treated as if they remain SSI recipients for MA purposes. MA Handbook, §25.2.1. Although there are special rules for treatment of social security income for MA purposes, DAC individuals still must be within the appropriate asset limit for MA coverage. MA Handbook, §16.1.

The asset limit for petitioner is \$2,000. Wis. Admin. Code, §§DHS 103.04 and 103.06(1)(a); Wis. Stat., §49.46(1); MA Handbook, §39.4.1. It is undisputed that if the trust is considered to be an available asset, petitioner's assets are over the limit. If it is unavailable, his assets are below the limit. A revocable trust is always considered to be an available asset. Wis. Stat., §49.454(2); MA Handbook, §16.6.3.

The county agency, after getting an opinion from Corporation Counsel, relied on the MA Handbook, §16.6.3., which provides that a trust is considered to be revocable if it can be revoked, canceled, or modified by a court. The explicit terms of petitioner's trust allow modification by a court.

I find that the trust at issue should not be considered to be an available asset. However, I am making that finding for a slightly different reason than argued by petitioner.

Petitioner is treated as if he remains an SSI recipient. In that circumstance, a trust's availability is reviewed under SSI rules. Wis. Admin. Code §DHS 103.06(7)(a)3. The Social Security Programs Operations Manual System (POMS) is the guiding policy document for the program, including SSI. POMS section SI 01120.200 governs the treatment of trusts created before January 1, 2000. It provides:

- A. Introduction to trusts...

1. Applicability of policy instructions

... Use these instructions to evaluate the following types of trusts:

a. Trusts established prior to January 01, 2000, that contain assets of the individual

This includes trusts established prior to January 01, 2000, that contain assets of the individual, any of which were transferred before January 01, 2000 ...

D. Policy for trusts as resources...

2. Trusts that are not resources

If an individual does not have the legal authority to revoke or terminate the trust or to direct the use of the trust assets for their own support and maintenance, the trust principal **is not** the individual's resource for SSI purposes.

The revocability of a trust and the ability to direct the use of the trust principal depend on the terms of the trust agreement and on State (or Tribal) law. If a trust is irrevocable by its terms and under State law, and the trust beneficiary cannot control or direct use of the trust assets for the trust beneficiary's support and maintenance, the trust **is not** a resource.

Bold portions in original.

Petitioner was eligible for SSI until 2019, when SSI ceased due to the receipt of DAC payments. Implicit in that fact is that the Social Security Administration (SSA) did not deem the trust to be an available asset for petitioner, no doubt following the POMS provision cited above. Thus it follows, in the unusual circumstances at issue here, with an almost 30-year-old trust and years of SSI eligibility with the trust excluded as an asset, that the policy requires continued treatment in the same manner that the SSA treated petitioner during his SSI eligibility period. Since the SSA deemed the trust to be unavailable, it should remain unavailable following his transition to DAC benefits.

If petitioner were a new MA applicant with no history of SSI eligibility, or was not an SSI recipient transitioning to DAC, I likely would find the trust to be available, in agreement with the Corporation Counsel's opinion. However, given the long history of the trust being excluded by the SSA, the DAC exception must control here.

I conclude that, under the rule concerning transition from SSI to DAC, the trust in this case must be considered to be unavailable to be consistent with petitioner continuing to be treated as an SSI recipient. The trust was not counted as an asset for SSI purposes, and thus it should not be counted as an asset with his transition to DAC eligibility.

CONCLUSIONS OF LAW

Petitioner's Life and Care Trust must continue to be considered an unavailable asset after his transition from SSI to DAC eligibility because DAC policy provides that he still must be treated as an SSI recipient, and the SSA considered the trust to be unavailable when he was eligible for SSI.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to characterize petitioner's Life and Care Trust as unavailable for continued MA eligibility, and thus to continue his MA eligibility. The agency shall take the action within 10 days of this decision.

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.

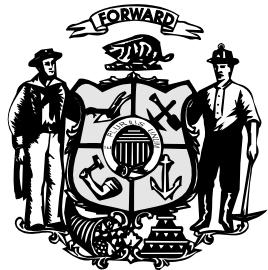
APPEAL TO COURT

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 21st day of October, 2025

\s _____
Brian C. Schneider
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 October 21, 2025.

Brown County Human Services
Division of Health Care Access and Accountability
Attorney Dayna Lefebvre