



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MAP - 219997

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed on September 12, 2025, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Sauk County Department of Human Services regarding Medical Assistance Purchase Plan (MAPP), a hearing was held on October 30, 2025, by telephone.

The issue for determination is whether the agency correctly terminated Petitioner's MAPP eligibility, effective August 1, 2025 based on a finding that the balance of his 401K retirement plan exceeds the program asset limit.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
201 E. Washington Ave.  
Madison, WI 53703

By: Barb Zeiler

Sauk County Department of Human Services  
505 Broadway, 4th Floor  
PO Box 29  
Baraboo, WI 53913

**ADMINISTRATIVE LAW JUDGE:**

Teresa A. Perez  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 47-year old resident of Sauk County who received Medical Assistance Purchase Plan ("MAPP") benefits for an unspecified period of time prior to August 1, 2025.
2. Petitioner initiated an annual MAPP renewal in June 2025. At that time, Petitioner owned the following assets: a checking account with a balance of \$51.77, a savings account with a balance of \$10, and a 401K retirement plan with a balance of approximately \$24,000
3. By notice dated July 7, 2025, the agency informed Petitioner that he was no longer eligible for MAPP as of August 1, 2025 because his assets exceeded the program limit.

### DISCUSSION

The issue here is whether the agency properly terminated Petitioner's MAPP eligibility based on a finding that he owns assets in excess of the program limit. It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. Because the agency seeks to terminate Petitioner's MAPP eligibility, the burden falls upon the agency to prove, by a preponderance of the credible evidence, that Petitioner is no longer eligible for MAPP. See Wis. Admin. Code §HA 3.09(4).

To be eligible for MAPP, an individual may have no more than \$15,000 of countable assets. See *Medicaid Eligibility Handbook (MEH)* §26.4.1.

An asset is not countable if it is not available. The *Medicaid Eligibility Handbook* provides the following general guidance regarding how to determine whether an asset is available:

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.

*MEH §16.2.1.*

In addition, the *Medicaid Eligibility Handbook* provides the following guidance specific to determining the availability of employer-sponsored retirement plans.

Employer-sponsored retirement plans are not counted as available assets if any of the following are true:

- The individual is currently receiving periodic payments from the plan.
- **The individual is still employed and would have to quit their job to obtain the funds.**
- The individual does not have access to the account's principal.
- **If none of the above are true and the individual has the ability to cash out their employer-sponsored retirement plan, the cash value of the plan (after any penalties but before any tax withholding) is counted as an available asset.**

*MEH §16.11.2.*

Although the agency asserted that Petitioner's countable assets exceed \$15,000, it was not clear from the agency's testimony or exhibits what steps, if any, the agency took to evaluate whether the full value of Petitioner's 401K plan is, in fact, available. Petitioner testified that he has been working with an attorney to try to access his 401K funds in order to establish a WisPACT trust and that he has learned that he can only access those funds if he quits his job, experiences a particular type of hardship, or requires the funds to pay for certain types of expenses. He also testified that he would incur a state and federal tax liability if he withdrew funds. He did not indicate whether he would incur any additional penalty.

Unfortunately, neither the agency nor Petitioner offered a copy of the 401K plan document, a letter from the financial services provider that administers his 401K plan, or any other documentation of the availability of the 401K plan. Petitioner did, however, offer sworn, credible testimony that he must quit his job to obtain the funds. Under such circumstances, a 401K plan is considered an unavailable asset for purposes of determining Medical Assistance eligibility pursuant to the policy cited above. If the agency has documentation to rebut Petitioner's testimony regarding the availability of his 401K plan, the agency may submit that documentation along with a rehearing request.

### **CONCLUSIONS OF LAW**

- (1) The agency did not meet its burden to establish that Petitioner owns more than \$15,000 in available assets.
- (2) There is insufficient evidence to establish that Petitioner's MAPP eligibility was properly terminated on August 1, 2025.

**THEREFORE, it is**

### **ORDERED**

That this matter is remanded to the agency to reinstate Petitioner's MAPP eligibility retroactive to August 1, 2025 and to send written notice to Petitioner confirming that it has done so. The agency must comply with these instructions within ten days of the date 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, 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.

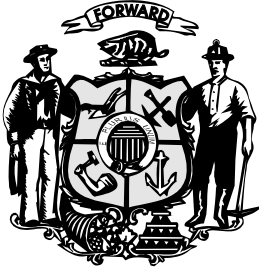
## APPEAL TO COURT

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, 201 E. Washington Ave., **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 31st day of October, 2025

\s \_\_\_\_\_  
Teresa A. Perez  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
5<sup>th</sup> Floor North  
4822 Madison Yards Way  
Madison, WI 53705-5400

Telephone: (608) 266-7709  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 31, 2025.

Sauk Cty Department of Human Services  
Division of Health Care Access and Accountability