



STATE OF WISCONSIN

In the Matter of



DECISION

FCP 159228

The attached proposed decision of the Administrative Law Judge dated September 25, 2014, is hereby adopted as the final order of the Department.

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, 5005 University Avenue, Suite 201, 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, Madison, WI, 53703, **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 request (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 12 day
of March, 2015.

A handwritten signature in cursive script.
Thomas J. Engels, Deputy Secretary
Department of Health Services



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



PROPOSED DECISION

FCP/159228

PRELIMINARY RECITALS

Pursuant to a petition filed July 21, 2014, under Wis. Admin. Code §DHS 10.55, to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on September 04, 2014. The record was held open for 7 days post-hearing to allow petitioner's attorney to submit additional documentation, which was received.

The issue for determination is whether the agency correctly determined the face value of petitioner's life insurance policy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: Julie Miller, ESS

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. In the summer of 2014 petitioner had her annual review for MA.
3. On July 3, 2014 the agency issued a notice of decision to petitioner stating that her MA was denied effective July 1, 2014 because, in relevant part, her assets exceeded the MA limit. The agency agreed at hearing that being over assets was the only reason for ending the MA as the verification issue was resolved.
4. The asset that the agency determined put petitioner over the limit was a life insurance policy. See Exhibit 1 and 6. Specifically, the agency determined the face value of the policy to be \$4123.52.

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. See *Medicaid Eligibility Handbook (MEH)*, §1.1.1, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. An individual is financially eligible for EBD-MA 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 MA.

One asset that the agency must consider is life insurance. *MEH*, §16.1. In this case, the agency argues that it was following state MA policy when determining the value of petitioner's life insurance policy. What happened with petitioner's life insurance was that her dividends were used to provide paid-up additional insurance protection. When determining the total of the face value of her policy, the agency considered the face amount of \$1000, which was what petitioner paid for the policy in 1971. See Exhibit 6. The \$1000 is also listed as the "Paid up Insurance Amount". See Exhibit 1. The agency used that \$1000 and added to that the "Paid-up Additional Insurance" of \$3091.53, and a termination dividend of \$32. The result was that the agency found the total face value to exceed \$1500, which caused the cash value to be considered, which caused the agency to determine that petitioner was over the asset limit for MA. The policy cited provides:

Life Insurance

Workers should enter the total of the face value plus any riders or other attachments as the "Face Value" on the Life Insurance Assets Page.

Face value (The face value of a life insurance policy is the policy's death benefit (the amount paid out at the death of the insured) at the time a life insurance policy is purchased.) is the basic death benefit of the policy including the value of riders and other attachments.

Count the cash value of all life insurance policies. For persons age 65 or over, blind or disabled, count it only when the total face value of all policies, including riders and attachments, owned by each person exceeds \$1,500. Do this calculation for each EBD person. In determining the face value, do not include any life insurance which has no cash value.

MEH, §16.7.5.

It appears this policy defines face value two ways. First, it says the face value of a life insurance policy is the policy's death benefit (the amount paid out at the death of the insured) at the time a life insurance policy is purchased. At the same time it also states that face value is the basic death benefit of the policy including the value of riders and other attachments. The previous versions of this policy section defined it as:

Face value is the basic death benefit of the policy exclusive of dividend additions or additional amounts payable because of accidental death or under other special provisions.

See MEH §16.7.5 (See e.g., Version #13-01). This change in policy was explained at least in part in Operations Memo #13-38 which provides:

LIFE INSURANCE FACE VALUE:

Under current policy, any cash value in a life insurance policy is only counted where the total face value of all policies owned by that individual exceeds \$1500 (MEH 16.7.5). As a result, a small but growing trend has emerged in the marketing of 'legacy policies' with a face value of \$1000 and riders up to \$500,000.

Beginning with applications dated November 11, 2013 or later, the face value of riders and other attachments are included in the total 'face value' of the policy. If the total face value of all life insurance policies, including riders and other attachments, is more than \$1,500, count the cash value of the policy as an available asset. (Wis. Stat. 49.47(4)(b)2w).

Workers should enter the total of the face value plus any riders or other attachments as the "Face Value" on the Life Insurance Assets Page.

Ops Memo #13-38 available at <http://www.dhs.wisconsin.gov/em/ops-memos/2013/PDF/13-38.pdf>.

The MA state code provision regarding life insurance policies defines face value as "the dollar amount of the policy which is payable on death." Wis. Adm. Code §DHS 103.06(10).

The petitioner argues that the face value is the \$1000, and therefore does not exceed the \$1500 threshold which triggers consideration of the policy's cash value.

The federal MA rules direct this state to use the same "financial methodologies" as the Supplemental Security Income (SSI) program when determining asset eligibility for an elderly or disabled person. 42 C.F.R. §435.601; see also 42 C.F.R. §416.1201. For SSI, the Program Operations Manual (POMS) provides guidance online at <https://secure.ssa.gov/apps10/poms.nsf/chapterlist!openview&restricttocategory=05>. The POMS states that for life insurance policies:

Dividend additions

The insurance companies use surplus company earnings, called dividend additions, to buy more insurance protection for the life insurance policy owner. Dividend additions increase the FV and CSV.

...

Face value (FV)

Face value (FV) is the amount that is contracted for at the time the life insurance policy is purchased – it is the amount to be paid out when the insured dies. The front page of the

life insurance policy may show it as such, or as the "amount of insurance," "the amount of this policy," "the sum insured," etc. A life insurance policy's FV does not include:

- the FV of any dividend additions, which are added after the life insurance policy is issued;
- additional sums payable in the event of accidental death or because of other special provisions; or
- the amount(s) of term insurance, when a policy provides whole life coverage for one family member and term coverage for the other(s).

...

2. Limited life insurance exclusion

a. Life insurance policies owned by one person that insure one person

- Exclude as a resource those life insurance policies owned by one person that insure only one person, if the cumulative FV of all policies held on that one person amount to \$1500 or less.
- Do not include the interest or dividend additions that have accumulated on the FV when determining whether a policy is a countable or excludable resource. Excluding the policy means excluding the CSV not any other part of the policy (e.g., the dividend accumulations).

This life insurance exclusion applies per person--\$1500 per insured individual.

POMS SI 01130.300 (Developing Life Insurance Policies)(emphasis added).

Accordingly, I find that the dividend additions should not have been counted in determining this life insurance policy's face value. The face value is \$1000, and thus, should be excluded as a resource of petitioner's. Further, I do not find that the state MA policy truly contemplates what happened here - counting the dividends used to provide additional paid-up insurance - but rather to count the face value *of riders and other attachments*. The evidence in this case does not show that the life insurance policy has any riders or other attachments that changed the conditions of the policy or benefits. Finally, because I find that the agency's policy, or at least one worker's interpretation of it, is limited by the federal guidance, this decision is being issued as a Proposed Decision pursuant to Wis. Admin. Code §HA 3.09(9)(b)1.

CONCLUSIONS OF LAW

The agency incorrectly determined the face value of petitioner's life insurance policy when it included the dividend additions in the calculation of its face value.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency with instructions to redetermine petitioner's life insurance policy face value consistent with the Conclusion of Law above and to rescind its termination of petitioner's MA effective July 1, 2014. These actions are to be completed within 10 days of the date of the Secretary's Final Decision, if and only if, this Proposed Decision is adopted therein.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH. If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as 'PARTIES IN INTEREST.'

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Milwaukee,
Wisconsin, this 25 day of September, 2014

A handwritten signature in cursive script, appearing to read "Kelly Cochrane", written over a horizontal line.

Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals