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STATE OF WISCONSIN
Division of Hearings and Appeals

DECISION
Case #: MDV - 191431

PRELIMINARY RECITALS

Pursuant to a petition filed on December 13, 2018, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Jefferson County Workforce Development Center regarding Medical Assistance (MA), a hearing was held on January 17, 2019, by telephone. This matter was incorrectly classified as a medical divestment case but should have been a medical eligibility case, given the actual issue for determination.

The issue for determination is whether the agency correctly denied Petitioner's application for medical benefits due to being over asset.

There appeared at that time the following persons:

PARTIES IN INTEREST:

ADMINISTRATIVE LAW JUDGE:
Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Winnebago County.
2. On October 31, 2018, Petitioner applied for Long Term Medicaid.

3. On November 30, 2018, the agency denied Petitioner's application, noting that she was over the asset limit because the face value of her life insurance policies was over $1500, which meant that the cash value was counted towards Petitioner's asset limit. The agency found that Petitioner's life insurance policies had a face value of $2557.57 and $1821.58, respectively. Since the agency determined that the face value of the life insurance policies was over $1500, the agency then included the cash value of the two policies as an available asset. The combined cash value of the policies is $4,183.25, which is over the $2000 asset limit.

4. On December 13, 2018, Petitioner filed a timely appeal and stated that the agency incorrectly determined the face value of the two policies. Petitioner argued that the first policy has a face value of $1000 and the second has a face value of $500, for a combined face value of $1500, which means that the cash value should not be counted towards assets.

DISCUSSION

To be certified for Institutional MA, a person cannot have nonexempt assets in excess of $2,000. Wis. Stat. §49.47(4)(b)3, Medicaid Eligibility Handbook (MEH), § 39.4. If available assets are above that limit, the person is not eligible for MA. Available assets generally include: life insurance (16.7.5 Life Insurance) MEH § 16.1. With respect to life insurance, agencies are instructed to:

> Count the cash value of all life insurance policies. For persons 65 years old or older, 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 elderly, blind, or disabled person. In determining the face value, do not include any life insurance which has no cash value.
>
> Face value is the basic death benefit of the policy including the value of riders and other attachments.
>
> Cash value means the net amount of cash for which the policy could be surrendered after deducting any loans or liens against it.
>
> 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.
>
> Life insurance policies always have a face value, but do not always have a cash value. Term life insurance is limited to a defined time period as stated in the policy and does not usually have cash value. Group life insurance is usually term insurance and usually has no cash value. An endowment insurance plan generally has cash value.

MEH §16.7.5. Thus, agency workers are only to count the cash value of all life insurance policies if the total face value of all policies exceeds $1500. The agency is further instructed to construe face value as "the basic death benefit of the policy".

In this case, Petitioner has two life insurance policies. The first one states that the "insurance amount" is $1000. This policy lists the "death benefit" as $2557.57. Thus, the agency is construing the face value to be $2557.57. The second policy has an "insurance amount" of $500.00 and a listed "death benefit" as $1821.58. Thus, the agency is construing the face value to be $1821.58. The agency is interpreting death benefit to equal face value, which is not an unreasonable interpretation, given the instructions of MEH §16.7.5.

However, Petitioner argued that the face value is actually the "insurance amount" as that is the basic death benefit and that the listed death benefit on the insurance form is actually the "current" death benefit, which is fluid and can change. Petitioner provided legal support for this clarification. Specifically, according the Social Security Administration's definition of "face value" as written in the Program Operations Manual System, face value 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).

Petitioner provided much clarity in the differentiation between "basic" death benefit and a listed "death benefit" on an insurance policy. MEH requires agencies to construe "basic death benefits" as the face value. The key is the word "basic". As noted above, the basic death benefit is the face value of the policy, which is the actual insurance amount. As explained by Petitioner's attorney, the listed "death benefit" on an insurance policy is fluid and actually means the "current" death benefit, which is corroborated by the definition noted above.

Under the above definitions, Petitioner's first life insurance policy has a face value of $1000 and the second has a face value of $500, making the face value of both policies $1500. Since the face value of all policies does not exceed $1500, the cash value of the policies cannot be included as an available asset. Thus, the agency incorrectly included the cash value of the life insurance policies as available assets when denying Petitioner's application.

CONCLUSIONS OF LAW

The agency incorrectly denied Petitioner's application for medical benefits for being over asset by including the cash value of Petitioner's life insurance policies.

THEREFORE, it is **ORDERED**

That within 10 days of the date of this decision, the agency makes a new determination regarding whether Petitioner's application should be approved after removing the cash value of Petitioner's life insurance policies as available assets.

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, 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 Milwaukee,
Wisconsin, this 12th day of February, 2019

\s_____
Nicole Bjork
Administrative Law Judge
Division of Hearings and Appeals