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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

DECISION
Case #: FCP-182436

PRELIMINARY RECITALS

Pursuant to a petition filed on July 18, 2017, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the St. Croix County Health & Human Services regarding Medical Assistance (MA), a hearing was held on August 23, 2017, by telephone.

The issue for determination is whether the department correctly denied the petitioner's application for Family Care Benefits because he did not sign a form making the state a secondary beneficiary on his state pension.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Petitioner's Representative:

Haskins Short LLC
5113 Monona Dr
Monona, WI 53716

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
By: Sheila Morden
St. Croix County Health & Human Services
1752 Dorset Lane
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # is a resident of St. Croix County.

2. The petitioner applied for medical assistance under the spousal impoverishment provisions of the program on May 8, 2017.

3. The petitioner and his wife both participate in the Wisconsin Retirement System. Each receives a regular pension whose benefits end upon death. They do not have annuities.

4. The department reviewed the petitioner's assets on June 29, 2017, and determined that his assets were within the program's limit.

5. The department denied the petitioner's application because he did not sign Form F-10192 making the state a secondary beneficiary on his pension.

DISCUSSION

The petitioner seeks Family Care Benefits, provides appropriate long-term care medical assistance services for elderly or disabled adults. Wis. Stat. § 46.286. The department determined that he met all of the program's eligibility requirement, including its asset limit, on June 29, 2017, but found him ineligible because he and his wife did not sign a form making the department remainder beneficiaries of their State of Wisconsin pensions.

The department may recover medical assistance payments from the recipient or his surviving spouse's estate. Wis. Stat. § 29.496(3). To help it recover these benefits, it requires the recipient to name the Wisconsin Department of Health Services Estate Recovery Program as a remainder beneficiary of any irrevocable annuity. *Medicaid Eligibility Handbook,* § 17.11.2.1. If the recipient does not name the program as a remainder beneficiary, the annuity is considered a divestment and thus counts as an asset when determining eligibility even though it is not available. Wis. Stat. § 49.453.

But pensions are different than annuities. When determining assets, only those actually available are counted. Wis. Admin. Code, § DHS 103.06(1). Once a person retires, the asset that funds his state pension is no longer available. Unlike with an annuity, a person does not take concrete steps to make the asset unavailable. Moreover, when the beneficiary of the pension and his spouse die, the payments end, making the naming of a remainder beneficiary meaningless because there is no such beneficiary. An annuity, on the other hand, will continue paying someone until it ends, thus allowing a remainder beneficiary after the main beneficiary and his spouse die.

The state retirement system does have annuities with residual heirs. But the petitioner and his wife have regular pensions, which do not have residual heirs. The verification of both pensions the Wisconsin Department of Employee Trust Funds prepared on March 27, 2017, should have made this clear to the person at the Help Desk who instructed the local agency to deny the application. If she didn't understand the verification form, she should have called ETF for an explanation. That verification provided the amount of income each pension provided and checked a box that stated: "This is a lifetime benefit payable to the recipient in accordance with the Wisconsin statutes. Any annual adjustment is applied to the May 1 payment." Below that are five different statements pertaining to annuities. Each has a box to be checked if it pertains to the pensioner. None of them were checked. The department should have found the petitioner eligible without requiring him to sign the remainder beneficiary form.

The remaining question is when the petitioner's benefits begin. Family Care regulations state that a person can receive benefits only after he is enrolled with an MCO. Wis. Admin. Code, § DHS 10.41(1). For years the Division of Hearings and Appeals strictly enforced this provision, which often resulted in delayed enrollment when the fault for the delay was entirely with the department. Lately, it has allowed earlier enrollment where the department's errors caused the delay. *See Final Decision No. FCP 167655.* The department is supposed to "determine the applicant's eligibility and cost sharing requirements" within

30 days of receiving a signed application. Wis. Admin. Code, § 10.31(6)(a). Here, the petitioner reapplied for benefits on May 8, 2017. The department denied his application on June 19, 2017, because he had no provided all of the requested verification. He contends he sent this in when applying earlier. It is reasonable for the department to ask that information be resubmitted because it might not retain everything. The petitioner resent all of the requested information on June 27, 2017. The department reviewed the information and determined that he met the program's asset limit as of June 29, 2017. At that point, its only basis for denying the application was that he did not make the department a remainder beneficiary of his pension. Based on this information, I find that he is eligible retroactive to June 29, 2017.

CONCLUSIONS OF LAW

The department improperly denied the petitioner's application for Family Care Medical Assistance because he had no obligation to make the department a remainder beneficiary to his and his wife's pensions.

THEREFORE, it is **ORDERED**

That this matter is remanded to the St. Croix County Department of Health and Human Services with instructions that within 10 days of the date of this decision it find the petitioner eligible for Family Care Medical assistance retroactive to June 29, 2017.

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, **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 4th day of October, 2017

\s_____
Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals