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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MGE - 207488

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on January 24, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Polk County Department of Social Services regarding Medical Assistance (MA), a hearing was held on March 8, 2023, by telephone.

The issue for determination is whether the petitioner timely appealed the agency's denial of Petitioner's application for MA enrollment due to assets exceeding program limits.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner's Representative:**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Respondent:**

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

By: [REDACTED]  
Polk County Department of Social Services  
100 Polk County Plaza, Suite 50  
Balsam Lake, WI 54810

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Chippewa County.
2. Petitioner's husband, [REDACTED], resides at the couples' residence, and Petitioner presently resides in [REDACTED], a community-based residential facility (CBRF).
3. An application was received on September 29, 2022 for MA. After asset assessment and verifications were received, the case failed due to excess assets and the application was denied on October 26, 2022. (Exhibit R-A).
4. The asset assessment related to the September 29, 2022 application determined that petitioner's asset limit was \$79,975.51 (Exhibit R-C). When verifications were received, [REDACTED] countable assets were calculated at \$90,695.77 (Exhibit R-D). All verifications for this asset assessment were based on the October 2022 functional eligibility established by the Aging and Disability Resource Center (ADRC) (Exhibit R-E).
5. The respondent processed a new MA request/application received on or about November 23, 2022. At this time, a new asset assessment and new verifications were received. The case was again denied by the agency due to excess assets on December 7, 2022 (Exhibit R-B).
6. Pertaining to the November 2022 MA application, a new functional eligibility screen was received by the agency showing a date of functional eligibility of November 28, 2022 (Exhibit R-G). A new asset limit was determined in the amount of \$55,010.19 (Exhibit R-H). Petitioner's countable assets were calculated at \$106,020.36 (Exhibit R-I).
7. Petitioner's assets increased between the asset assessments completed in October and late November due to money pulled from the IRA of petitioner's spouse and deposited into a joint checking account co-owned by petitioner. This IRA was treated during both asset assessments as an unavailable asset and did not count towards any of the calculations. However, when the funds pulled from the IRA were placed into the joint checking account, they became part of the petitioner's countable liquid assets (Exhibit R-J).
8. Petitioner filed an appeal of the MA denial on January 24, 2023, via facsimile received by the Division of Hearings and Appeals on that same date. (Exhibit P-1).

## DISCUSSION

Generally, a person cannot have more than \$2,000 in assets and still be eligible for medical assistance. Wis. Stats., § 49.47(4). However, in order to prevent the spouse of an institutionalized person from becoming impoverished, the institutionalized spouse can allocate assets to the spouse who remains in the community. See Wis. Stat. § 49.455. The amount that can be allocated depends upon the amount of assets the couple has when the agency performs an assessment.

The law currently allows couples whose liquid assets are between \$100,000 and \$274,800 to assign half of the assets to the community spouse. Those whose assets are below \$100,000 can assign \$50,000 to the spouse in the community. Wis. Stat. § 49.455(6)(b); Medicaid Eligibility Handbook (MEH) § 18.4.3. Because the applicant can also have \$2,000 in assets, this amount is added to the total amount of assets that a couple could have and one would still be eligible for medical assistance.

The primary issue raised by petitioner is whether the agency properly determined that she exceeded the asset limit for purposes of eligibility for MA. In review of the record, I became aware post-hearing that a preliminary issue would first need to be addressed, i.e., the timeliness of the appeal filing.

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely, even by a single day. An appeal of a negative action by the agency concerning MA must be filed within 45 days of the date of the action. See Wis. Stat. §§49.45(5) and 49.21(1). A negative action includes the denial of an application, the reduction or termination of an ongoing case, or an overpayment. The petitioner's appeal was filed on January 24, 2023, which is one day after the expiration of the appeal timeframe. The December 7, 2023 notice issued to petitioner explicitly identified the appeal deadline of January 23, 2023. Thus, petitioner's appeal is untimely, and no jurisdiction exists for considering the merits of the case.

It is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). In other words, I cannot change the outcome here based on any fairness argument. This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

Nothing in this Decision precludes petitioner from applying for MA benefits in the future.

### CONCLUSIONS OF LAW

Jurisdiction is not present to consider the merits of petitioner's appeal of the agency's denial of her MA application because petitioner did not timely file her appeal.

**THEREFORE, it is**

**ORDERED**

That the petitioner's appeal is dismissed.

### **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

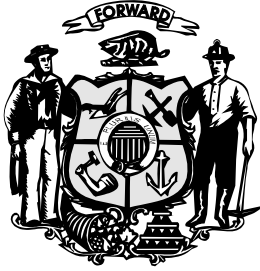
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 7th day of April, 2023



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Peter McCombs  
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 April 7, 2023.

Polk County Department of Social Services  
Division of Health Care Access and Accountability

