



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MGE/162960

PRELIMINARY RECITALS

Pursuant to a petition filed December 31, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on February 26, 2015, at Waukesha, Wisconsin.

The issues for determination are:

- 1) Whether the agency correctly denied the Petitioner's request to backdate his benefits to October 1, 2014, based upon the inclusion of assets that were later documented to be for a funeral fund, and
2) Whether the agency correctly refused to allow a deduction for health insurance premiums paid by the Petitioner's spouse when determining the Petitioner's patient liability.

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: Nicholas Kusch, Economic Support Specialist
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Waukesha County.

2. On November, 19, 2014, the Petitioner submitted an application for Institution Long Term Care Medicaid benefits, seeking enrollment beginning October 1, 2014. (Exhibit 10)
3. In section 7 of the November 19, 2014 application, the Petitioner indicated that he and his spouse had burial assets valued at \$34,733.52. (Id.)
4. On or about November 19, 2014, the Petitioner's spouse and power of attorney signed a designation of burial funds indicating that assets from an [REDACTED] account and a [REDACTED] were intended for use as a burial fund. The total value of the two items was stated to be \$34,788.00; or \$17,394.00 for each spouse. (Exhibit 4)
5. On December 23, 2014, Waukesha County Health and Human Services (the agency) sent the Petitioner a notice indicating that he was enrolled in Nursing Home Long Term Care Medicaid effective November 1, 2014 with a patient liability of \$2,614.00 per month. (Exhibit 7)
6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and appeals on December 31, 2014. (Exhibit 1)
7. Petitioner's spouse has health insurance through her employer. She is enrolled in an employee + one plan, which also covers medical expenses for the Petitioner. Petitioner's spouse pays for the insurance premium through a payroll deduction. (Testimony of [REDACTED])
8. In 2014, there was a difference of \$191.00 per month between the premiums paid for an employee only plan and an employee + one plan. In 2015, the difference between the premiums is \$230.00 per month. (Exhibit 2, attachment 7G)
9. Similarly, the Petitioner is enrolled in a dental/vision plan as employee + one. In 2014, the difference in the premiums between an employee only plan and an employee + one plan was \$64.00 per month; in 2015, it is \$68.00 per month. (Id.)

## DISCUSSION

### I. Backdating Petitioner's Benefits.

Medicaid benefits may be backdated up to three months prior to the application month. *Medicaid Eligibility Handbook (MEH)* § 2.8.2 An applicant may be "certified in any backdate month in which s/he would have been eligible had s/he applied in that month." *Id.*

In the case at hand, the Petitioner seeks backdated eligibility to October 1, 2014.

It is the agency's position that when the value of the Petitioner's [REDACTED] stocks and [REDACTED] insurance are counted for October 2014, the Petitioner is ineligible.

It is the Petitioner's position that those assets should not be counted, because they were designated as a burial asset.

The Petitioner has a community spouse; as such, the spousal impoverishment rules apply in determining countable assets. *MEH* §27.5.1.

Under spousal impoverishment rules, "Any/all assets designated for burial purposes are exempt. Any unreasonable amount should be supported by documentation of the burial related costs or contract." *MEH* §18.4.1, ¶3

The Petitioner and his spouse formally designated \$34,788.00 in stocks and insurance as a burial fund in November 2014. Consequently, the agency exempted the assets and the Petitioner was found eligible for Medicaid benefits effective November 1, 2014.

It is undisputed that if the assets in question are counted, that Petitioner is over the asset limit and ineligible for Medicaid benefits. However, Petitioner's attorney argued that the stocks and insurance did not need to be specifically designated as burial funds in October 2014. Petitioner's attorney argues that the November 2014 designation is enough and that it is unreasonable to expect people to designate burial funds before they apply for Medicaid benefits. Petitioner's attorney also argues that the intent to designate the assets as a burial fund existed in October 2014.

First, Petitioner's attorney has cited to no administrative rule or provision in the Medicaid Eligibility Handbook that allows for a retroactive designation of burial funds. Second, while it is true that many people are taken by surprise by a need to apply for Medicaid benefits when an unforeseen tragedy strikes, it is also true that some people engage in estate planning and have burial funds set aside before they ever need to apply for Medicaid. Other individuals have been known to purchase burial insurance or to set up burial trusts as part of this planning. Third, Petitioner's spouse could not offer any testimony establishing exactly when the Petitioner and she decided to use the [REDACTED] stocks and [REDACTED] as a burial fund. She could only testify to some non-specific discussions with her attorney about which assets, out of all the assets Petitioner and she owned, should be designated as a burial fund.

Because there is no evidence that the stocks and insurance policy in question were specifically designated as burial funds in October 2014, the agency was correct to count them as an asset when making its eligibility determination for October 2014. Accordingly, the agency correctly denied the Petitioner's request to back date his benefits to October 2014.

## II. Patient Liability

Petitioner's attorney filed an appeal concerning the calculation of Petitioner's patient liability, arguing that a portion of the insurance premiums paid by the Petitioner's spouse for Petitioner's health insurance should be allowed as a deduction when calculating the Petitioner's patient liability.

A patient liability is the amount an institutionalized Medicaid patient will pay each month to offset the cost of his/her care. *MEH §27.7.1*. It is referred to as a cost share when applied to a community waivers / Family Care client. *Id.*

In calculating a patient liability there is, in fact, a deduction for health insurance premiums and medical / remedial expenses. *MEH §27.7.1* It should be noted that health insurance premiums are considered a medical expense. *MEH §15.7.3*

In order to use a medical expense as an income deduction, "the institutionalized individual must be legally liable for the payment of the incurred medical/remedial expense." *MEH §27.8.1* The Petitioner is not legally liable for paying the insurance premiums in question. His spouse is the liable party. As such, the Petitioner may not use those premiums as a deduction in the patient liability calculation.

This conclusion is consistent with the Monthly Need<sup>1</sup> provisions, which state under *MEH §27.6.4*, that health insurance costs are allowed in Monthly Need calculations only if the "primary person is the owner of the policy and billed for the premium". The only reasonable interpretation of "primary person" is the applicant. *See Example 1 under MEH §27.6.4* Thus, health insurance costs are only allowed if the applicant is the owner of the policy and billed for the premium. The Petitioner is not billed for the premium, his wife is.

Based upon the foregoing, it is found that the agency correctly excluded the insurance premiums paid by the spouse for Petitioner's private health insurance when calculating the Petitioner's patient liability.

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<sup>1</sup> Monthly need is the amount by which the institutionalized person's expenses exceed his/her income. It is computed by adding together certain costs. (See *MEH §27.6.1*)

It should be noted, however, that because the entire insurance premium is something the community spouse is obligated to pay, that it should be counted as an expense when determining whether the Minimum Monthly Maintenance Needs Allowance should be raised.<sup>2</sup>

**CONCLUSIONS OF LAW**

- 1) The agency correctly denied the Petitioner’s request to backdate his benefits to October 1, 2014.
- 2) The agency correctly refused to allow a deduction for health insurance premiums paid by the Petitioner’s spouse for Petitioner’s private health insurance coverage, when determining the Petitioner’s patient liability.

**THEREFORE, it is ORDERED**

That the petition 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, 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, Wisconsin 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 (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 6th day of March, 2015

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals

<sup>2</sup> It would certainly make for good public policy to encourage couples to pay for private insurance for the institutionalized spouse, since Medicaid is a payer of last resort. Of course, lucky couples who can afford the private insurance may want it, anyway, since the quality of coverage might be better than what is otherwise offered by Medicaid.



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The preceding decision was sent to the following parties on March 6, 2015.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability

