



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MGE/169735

PRELIMINARY RECITALS

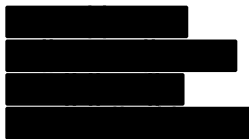
Pursuant to a petition filed October 30, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on April 26, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's MA application.

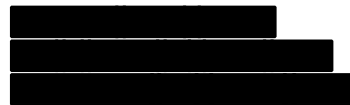
There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: [Redacted]

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Waukesha County.
2. On August 12, 2015, an Institutional MA application was submitted on behalf of the Petitioner. A request was made at that time to back-date the application to May 1, 2015. Petitioner was admitted to a skilled nursing facility on May 21, 2015.

3. Prior to her admission to the skilled nursing facility, the Petitioner lived with her daughter. Petitioner's daughter was appointed by the [REDACTED] as the Petitioner's fiduciary for purposes of a [REDACTED] pension.
4. In the application, the Petitioner reported income including SS income of \$1,277/month, a [REDACTED] pension of \$98.74/month and \$550/month from the [REDACTED]. A cover letter from the Petitioner's representative was submitted with the application. It includes the following information: "Also, we believe [REDACTED] receives a [REDACTED] pension of \$550.00. The [REDACTED] nor the [REDACTED] appointed Fiduciary are not forthcoming with information therefore, we are in the process of obtaining more information."
5. On August 27, 2015, the agency issued a letter to the Petitioner's representative requesting additional verification of the gross [REDACTED] income and verification of where the [REDACTED] income was deposited. The due date for the requested information was September 11, 2015.
6. On September 11, 2015, the Petitioner's representative submitted a letter to the agency informing the agency that the Petitioner passed away on September 4, 2011. The representative also provided additional information. With regard to the [REDACTED] income, the representative informed the agency that she had been unable to verify the gross [REDACTED] income and where the money had been deposited because the [REDACTED] fiduciary was not forthcoming with the information.
7. On September 14, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her application was denied.
8. On October 30, 2015, an appeal was filed with the Division of Hearings and Appeals.
9. On January 14, 2016, the Petitioner's son [REDACTED] was appointed the personal representative of her estate.
10. On or about February 12, 2016, [REDACTED] made a request to the [REDACTED] for a copy of the documentation of appointment of a Fiduciary for the Petitioner, any accountings filed with the [REDACTED] by a fiduciary, any report of change or use of funds submitted to the [REDACTED] by a fiduciary, and a copy of any correspondence received by the [REDACTED] by a fiduciary.
11. On or about March 14, 2016, [REDACTED] received information from the [REDACTED] including a Rating Decision dated January 20, 2012 finding that the Petitioner was not competent to handle disbursement of [REDACTED] funds, a Statement in Support of Claim filed by the Petitioner on October 26, 2011 stating that she agrees with the rating of incompetence and requesting that her daughter be appointed fiduciary, a notice of March 26, 2012 informing the Petitioner of the appointment of her daughter as fiduciary, and information regarding reported expenses of the Petitioner. Specifically, in March, 2012, the Petitioner reported that she had the following monthly expenses:

Auto insurance	\$ 30.00
Caregiver	\$1800.00*
Cell phone	\$ 20.00
Home insurance	\$ 50.00
Medical insurance	\$ 243.00
Personal needs/spending money	\$ 200.00
RX	\$ 300.00
Real estate taxes	\$ 380.00
Telephone	\$ 25.00
Vehicle maintenance	\$ 150.00

Condo fees	\$ 300.00
Household goods	\$ 40.00
Total	\$3658.00

*A subsequent statement by the Petitioner and her daughter on March 26, 2012 corrected this figure to \$1,000/month. Monthly expenses would be \$2858 with this adjustment.

12. On June 18, 2013, the Petitioner and her daughter met with a [REDACTED] field examiner. The Petitioner's daughter was "reaffirmed" as payee for the Petitioner. A letter from the [REDACTED] to the Petitioner's daughter dated June 25, 2013 states that the Petitioner receives \$555/month from the [REDACTED] and reported monthly expenses were identified as follows:

Care Providers	\$1000.00
Cell phone	\$ 20.00
Insurance- home/renters	\$ 50.00
Insurance- health/dental	\$ 243.00
Medical co-pays	\$ 300.00
Personal needs	\$ 200.00
Real estate taxes	\$ 380.00
Telephone	\$ 25.00
TV	\$ 120.00
Vehicle maintenance	\$ 150.00
Vehicle payment	\$ 30.00
Other	\$ 300.00
Total	\$2818.00

The letter of June 25, 2013 specifies that the [REDACTED] income would pay the real estate taxes of \$380/month and "other" expenses of \$175/month.

13. On September 14, 2015, the agency denied the Petitioner's MA application.
14. On October 30, 2015, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

Medicaid rules require recipients to verify relevant information, including assets. Wis. Admin. Code, § DHS 102.03(3)(h). Agencies must allow at least 30 days from the date of application, or 10 days from the date of the request, whichever is later, to verify the information. Medicaid Eligibility Handbook (MEH), § 20.7.1.1. see also Wis. Admin. Code § DHS 102.03(1). Verification of assets is mandatory. MEH, § 20.3.1. Individuals with over \$2000 in countable assets are not eligible for Medicaid. MEH, § 25.7.2.

It is the responsibility of an applicant/recipient to resolve questionable information, but workers must assist those who have "difficulty in obtaining" verification. MEH, § 20.1.4. Workers cannot deny eligibility to those who lack the ability to produce verification. MEH, § 20.5. The handbook provisions are consistent with Wis. Admin. Code, § DHS 102.03(1):

An application for MA shall be denied when the applicant or recipient is able to produce required verifications but refuses or fails to do so....If the applicant or recipient is not

able to produce verifications, or requires assistance to do so, the agency may not deny assistance but shall proceed immediately to verify the data elements.

The Handbook instructs agency workers how to carry out this regulation:

Begin or continue benefits when:

1. The member provides requested verification within the specified time limits and is otherwise eligible.
2. Requested verification is mandatory, but the member does not have the power to produce the verification and s/he is otherwise eligible.

...

Deny or reduce benefits when all of the following are true:

1. The member has the power to produce the verification.
2. The time allowed to produce the verification has passed.
3. The member has been given adequate notice of the verification required.
4. You need the requested verification to determine current eligibility. Do not deny current eligibility because a member does not verify some past circumstance not affecting current eligibility

MEH, §§ 20.8.1 and 20.8.3.

The MA Handbook further instructs:

The IM worker must use all available data exchanges to verify information rather than requiring the applicant to provide it. Use the best information available to process the application or change within the time limit and issue benefits when the following two conditions exist:

1. The applicant/member does not have the power to produce verification, and
2. Information is not obtainable timely even with your assistance.

Do not deny eligibility in this situation, but continue in your attempts to obtain verification. When you have received the verification, you may need to adjust or recover benefits based on the new information. Explain this to the applicant/member when requesting verification.

MEH, § 20.1.4.

In this case, it is undisputed that the Petitioner herself is unable to provide reliable information regarding her assets. Her daughter is not being cooperative with the agency regarding the use of the [REDACTED] funds distributed to the Petitioner. The Petitioner’s attorney and the Petitioner’s son have obtained as much information as they can from the [REDACTED] and have attempted to gain cooperation from the Petitioner’s daughter regarding the use of the [REDACTED] funds to no avail.

The county agency asserts that \$33,000 of [REDACTED] funds distributed to the Petitioner are unaccounted for and that it cannot verify her assets without proof of what happened to those funds. I find no merit in the agency’s argument.

Medical assistance is meant to provide medical care to shoe who cannot afford it. The verification rules exist to give agencies the tools to determine those who are actually in need of assistance. While the burden is on applicants to prove eligibility, workers have flexibility in making determinations and are instructed to assist applicants and not to over verify.

The evidence in this case establishes that the Petitioner's income over several years has consisted of approximately \$1200/month in Social Security income, \$98/month in pension income and \$555/month in [REDACTED] income. The evidence further establishes that her monthly expenses exceed her monthly income. The accounting of the Petitioner's monthly expenses provided by the Petitioner and her daughter to the [REDACTED] are reasonable. Given that her monthly expenses have exceeded her monthly income for several years, I do not find the county's argument that she has up to \$33,000 in assets stashed away in an account to be plausible.

The Petitioner's personal representative testified that the Petitioner's daughter has had financial trouble. While it is possible that the Petitioner's daughter was improperly using the Petitioner's [REDACTED] funds, it is undisputed that the Petitioner's daughter was taking care of the Petitioner for many years. Again, the reasonable accounting of monthly expenses demonstrates that the Petitioner's expenses exceeded her monthly income. Based on the information available, it appears to be highly likely that most, if not all, of the Petitioner's income was used to meet her monthly expenses.

I conclude the best available evidence and information is that the Petitioner is under the asset limit of \$2000. Other than speculating about a possible bank account, the agency has been unable to produce any evidence that the Petitioner exceeds the asset limit. The county agency is required to process the Petitioner's application based on the information available because the Petitioner does not have the power or is unable to produce any further verification and the county agency has no reliable evidence that additional assets exist.

I am remanding this matter to the county agency to continue processing the Petitioner's MA application based on the best information available regarding her assets and income; specifically, there is no evidence that her assets exceed \$2000. If information becomes available to show that the Petitioner's assets exceed the asset limit, the agency has the authority to take action to recover benefits.

CONCLUSIONS OF LAW

The agency did not properly deny the Petitioner's MA application.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to continue processing the Petitioner's MA application of August 12, 2015 based on the information in the application and additional information subsequently received by the agency regarding the Petitioner's assets and income. Specifically, the agency does not have evidence that the Petitioner's assets exceed \$2000 and must continue processing the application based on evidence that her assets do not exceed the asset limit. The agency shall issue a new Notice of Decision to the Petitioner upon completion of processing the application. New appeal rights shall be provided to the Petitioner. These actions shall be completed as soon as possible but no later than 10 days from the date of this decision.

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 3rd day of May, 2016

\sDebra Bursinger
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 May 3, 2016.

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

