



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MGE - 198675

PRELIMINARY RECITALS

Pursuant to a petition filed on April 20, 2020, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department regarding Medical Assistance (MA), a hearing was held on June 30, 2020, by telephone.

The issue for determination is whether the petitioner's assets were available in January-March 2020.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED], Fair Hearing Coordinator
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.

2. In December 2019, petitioner's son ██████ filed a guardianship action on petitioner's behalf because petitioner was considered incompetent and unable to pay his bills.
3. On January 2, 2020, an Examining Physician's or Psychologist's Report was filed in ██████ Court identifying petitioner was in need of protective placement and that due to his diagnosis of dementia was unable to manage his property and financial affairs.
4. On January 27, 2020 petitioner applied for Nursing Home Long Term Care MA.
5. On January 31, 2020 a Comprehensive Evaluation was filed in ██████ Court recommending that petitioner be determined incompetent by reason of a diagnosis of dementia, that ██████ be appointed petitioner's Guardian of Person and Estate, and that petitioner be protectively placed in a skilled nursing facility.
6. A request for verification was issued to the petitioner regarding assets on January 31, 2020 with a due date of February 26, 2020.
7. On February 12, 2020 ██████ Court awarded guardianship of the petitioner to his daughter in law. She thereafter began providing her letter of guardianship to his ██████ to pay his bills.
8. On February 24, 2020 petitioner's guardian closed the ██████ account and deposited funds from same into a ██████ account. Due to logistical delays with that bank, the guardian was not able to pay bills from that account until February 29, 2020. The pay outs from that account left his available balance as \$840.68.
9. Petitioner's representative requested an extension of the due date for the verifications, which was granted and extended to March 5, 2020.
10. On March 5, 2020, the agency processed petitioner's verifications.
11. On March 6, 2020, the agency issued another request for verification regarding accounts with ██████ with a due date of March 16, 2020.
12. On March 23, 2020, the agency issued another request for verification regarding accounts with ██████ with a due date of April 2, 2020.
13. On March 25, 2020, the agency received verification of ██████ showing an available balance of \$11,551.70 in the checking account and \$5 in his savings account.
14. On March 26, 2020, the agency issued petitioner a notice stating that his MA was denied due to being over the asset limit.
15. On April 8, 2020 petitioner applied again for Nursing Home Long Term Care MA. Petitioner provided verification that the ██████ checking account balance was \$840.68 effective April 2020.
16. On April 10, 2020, the agency issued a notice to petitioner stating that he was eligible for MA effective April 1, 2020

DISCUSSION

Medicaid is a state/federal program that provides health coverage for Wisconsin residents that are elderly, blind, or disabled (EBD) or receive Wisconsin Well Woman Medicaid. Medicaid is also known as Medical Assistance, MA, and Title 19. The EBD fiscal group's assets must be within the appropriate categorically needy or medically needy asset limit before any member of that group can qualify for Medicaid. EBD fiscal groups who have assets in excess of the appropriate EBD medically needy asset

limit are ineligible for Medicaid. See *MA Eligibility Handbook* §§1.1.1 and 1.1.3.1., available online at <http://www.emhandbooks.wi.gov/meh-ebd/>.

An individual is financially eligible for EBD-MA if the total value of all non-exempt liquid assets does not exceed \$2,000. Wis. Stats. §49.47(4)(b). The clear, unambiguous language of both Wis. Stat. §49.47(4)(b), and Wis. Admin. Code §DHS 103.08(1), states that eligibility cannot exist prior to the date on which all eligibility requirements are met. Until the actual date an individual's liquid assets fall below \$2,000, an individual is ineligible for MA.

Petitioner's representative did not dispute the amount of assets that the agency determined for him. Rather, she argued that he was incompetent and unable to spenddown his assets for the months of January-March 2020. As explained in the Findings above, a process was started for guardianship and protective placement in December 2019 due to his dementia.

The *MA Handbook* provides for such a situation wherein it states:

An asset is available when:

1. It can be sold, transferred, or disposed of by the owner or the owner's representative, and
2. The owner has a legal right to the money obtained from sale of the asset, and
3. The owner has the legal ability to make the money available for support and maintenance, and
4. The asset can be made available in less than 30 days.

Consider an asset as unavailable if **either**:

1. The *member* lacks the ability to provide legal access to the assets, and
2. No one else can access the assets, and
3. A process has been started to get legal access to the assets.

Or,

When the owner or owner's representative documents that the asset will not be available for 30 days or more, and the process has been started to obtain the assets.

Use the criteria above to determine whether an asset was available in a backdate month unless an asset is deemed unavailable in the month of application because it will not be available for 30 or more days (considered unavailable in any or all backdate months).

MA Eligibility Handbook §16.2.1.

Here, we have a physician's report identifying petitioner was in need of protective placement and that due to his diagnosis of dementia was unable to manage his property and financial affairs (he lacked the ability to provide legal access to the assets), no one else could access the assets because the guardianship matter was still pending, and with that matter pending shows "a process has been started to get legal access to the assets." Accordingly, I find that the assets in January-March 2020 were unavailable and should not be counted. I am remanding the matter so the agency can redetermine petitioner's eligibility for those months.

CONCLUSIONS OF LAW

The petitioner's assets in his bank accounts were unavailable in January-March 2020.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to remove the petitioner's bank accounts as countable assets, redetermine petitioner's eligibility for MA effective January-March 2020, and issue a notice of decision regarding same. These actions shall be completed within 10 days of 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, 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.

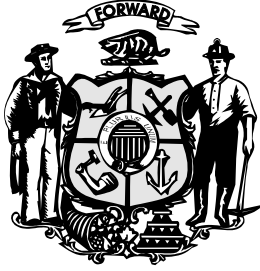
APPEAL TO COURT

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 5th day of August, 2020

\s _____
Kelly Cochrane
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 August 5, 2020.

Kenosha County Human Service Department
Division of Health Care Access and Accountability