

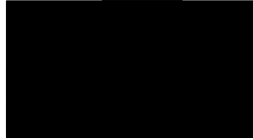


FH  
[REDACTED]

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

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In the Matter of



**DECISION**  
Case #: MGE - 211566

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**PRELIMINARY RECITALS**

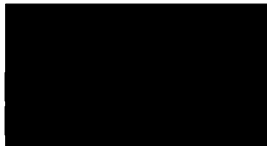
Pursuant to a petition filed on December 28, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Shawano County Department of Human Services regarding Medical Assistance (MA), a hearing was held on January 31, 2024, by telephone.

The issue for determination is whether the agency correctly found that Petitioner had assets in excess of the \$2,000 Institutional Medical Assistance asset limit for the month of July 2023.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By: Sarah Bartz

Shawano County Department of Human Services  
W7327 Anderson Avenue  
Shawano, WI 54166-3105

**ADMINISTRATIVE LAW JUDGE:**

Teresa A. Perez  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Shawano County who died on September 23, 2023.
2. Petitioner resided in [REDACTED], a skilled nursing facility, from at least July 2023 through September 2023.
3. Petitioner filed an application for Institutional Medical Assistance on September 1, 2023 and requested that her benefits begin as of July 2023.
4. The agency found that Petitioner was eligible for Institutional Medical Assistance for the months of August 2023 and September 2023 but not eligible for the month of July 2023 because she had countable assets in excess of \$2,000 in that month.
5. Petitioner had a savings account and checking account with [REDACTED] in July 2023.
6. As of July 31, 2023, Petitioner had a balance of \$286.11 in her savings account and a balance of \$4,928.04 in her checking account according to her July 2023 bank statement. Her checking account balance included a \$1,599 Social Security benefit received on July 3, 2023.
7. On July 31, 2023, Petitioner's representative wrote out, signed, and delivered a check to [REDACTED] for \$2,004. [REDACTED] deposited that amount on July 31, 2023 but the subtraction of those funds from Petitioner's checking account was not reflected on her July 2023 bank statement.
8. After subtracting the \$2,004 check amount, Petitioner's checking account balance was \$1,325.04.
9. Petitioner's total available, countable assets (checking and savings accounts) as of July 31, 2023 was \$1,611.15.

### DISCUSSION

To be eligible for "Elderly / Blind / Disabled Medicaid" ("EBD Medicaid"), a category that includes "Nursing Home Long Term Care" (also referred to as "Institutional Medical Assistance"), an unmarried individual must meet certain financial eligibility requirements. One of those requirements provides that an unmarried individual may not own countable, available assets in excess of \$2,000. *Medicaid Eligibility Handbook [MEH]* §16.1 and 39.4.1.

The countable asset limit for Institutional Medical Assistance, sometimes referred to as nursing home long term care, is \$2,000 for an unmarried individual. *Medicaid Eligibility Handbook (MEH)* §§27.5.1 and 39.4.1. Income received in a month is not counted as an asset unless and until it is retained into the following month. *MEH* §16.1. An asset is only countable if it is available. *Id.* at §16.1. An asset is available when the following criteria are met:

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.

*Id.* at §16.2.1. An asset is not available if the member lacks the ability to provide legal access to the assets. *Id.*

The agency here contended that Petitioner was not eligible for Institutional Medicaid in July 2023 because her countable assets were below the \$2,000 program asset limit by the last day of the month as shown on her July 2023 bank statement.

Petitioner's representative countered that, although the July 2023 bank statement showed a balance in excess of \$2,000 at the end of the month, the value of that account was in fact less than \$2,000 because there was a \$2,004 check that had been delivered to [REDACTED] on July 31, 2023 and because that check was stamped by the bank as deposited on July 31, 2023. Petitioner's representative provided a copy of the front and the back of that check.

I concur with Petitioner's representative. Once she wrote out and delivered that check to the recipient, Petitioner no longer had a legal right to make that money available for himself—even if the check had not been cashed until August 1 or after. The amount for which the check was written was therefore an unavailable asset as of July 31, 2023.

As the agency correctly noted, the \$1,599 Social Security deposit must be deducted when calculating Petitioner's July countable assets because such deposits are considered income, not assets, in the month of receipt. Therefore, both the \$2,004 check amount and the \$1,599 Social Security amount must be subtracted from the July ending balance reflected on Petitioner's July bank statement to determine the countable value of the account.

After doing the requisite math, I find that the countable value of the [REDACTED] checking account for July 2023 was \$1,325.04 and that Petitioner's total available, countable assets (i.e., the combined available funds in her checking and savings accounts) as of July 31, 2023 was \$1,611.15.

### CONCLUSIONS OF LAW

Petitioner's countable available assets as of July 31, 2023 were under the \$2,000 Institutional Medical Assistance program asset limit.

**THEREFORE, it is**

**ORDERED**

That the matter is remanded to the agency to backdate Petitioner's Institutional Medical Assistance to July 1, 2023 and to issue Petitioner a written notice confirming that it has done so. The agency shall complete these instructions within ten 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, 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.

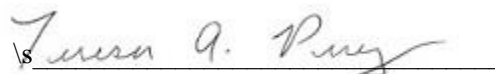
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

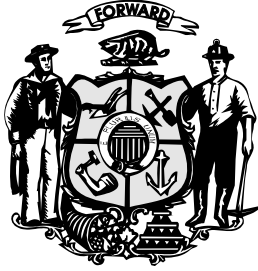
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 15th day of March, 2024



Teresa A. Perez  
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 March 15, 2024.

Shawano County Department of Human Services  
Division of Health Care Access and Accountability