



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MAP - 212141

PRELIMINARY RECITALS

Pursuant to a petition filed on February 14, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Capital Consortium regarding the discontinuance of Medical Assistance Purchase Plan (“MAPP”) eligibility, a hearing was held on March 20, 2024, by telephone. The record was held open for 10 days for the submission of information from both parties, and the information has been received.

The issue for determination is whether the Department, by its agents, correctly denied the petitioner’s renewal application for Medicaid Purchase Plan (“MAPP”) eligibility due to available assets in a defined benefit pension plan.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
Capital Consortium
c/o Columbia County Health & Human Services
By: Elizabeth Lane
PO Box 136
Portage, WI 53901

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 38 year-old single resident of Dane County. She was a Medicaid Purchase Plan (a/k/a, “MAPP” or “MAP”) recipient in at least December 2023. She reports that she uses the I Respect, I Self Direct (IRIS) waiver program through the Department’s service agent entity “TMG” to provide a caregiver to meet most of her activities of daily living.
2. The statewide “pandemic emergency” policies started on January 31, 2023, and generally began to end in April 2023. The original emergency declaration resulted in the Department’s cessation of periodic re-certification review of Medical Assistance cases, including Medicaid Purchase Plan recipient. It ended on a rolling-basis as each MA case reached an annual review date, prospectively, after April 2023. The effective date for the reinstatement of financial requirements was delayed for special populations like those served by MAPP and became effective for MAPP on January 1, 2024. See, *DMS Operations Memo #23-35*, as Amended on November 14, 2023.
3. In January 2024, the Department, by its consortium agents, contacted the petitioner and requested verification of a [REDACTED] ([REDACTED]) account that she owned as a former seven-year public employee at the [REDACTED], as managed and administered by the [REDACTED] ([REDACTED]). See, Exhibit #2, attached email of [REDACTED] [REDACTED] dated March 18, 2024.
4. On or about January 18, 2024, and again on January 23, 2024, the petitioner provided the agency with a copy of her January 1, 2023, “Annual Statement of Benefits” from [REDACTED] that demonstrated that as of that annualized statement day, she had an account valued at \$34,324.96 if she was an “inactive employee” under 55 years of age and valued at \$68,649.97 if she were an “active employee.” See, Exhibit #2, attachments.
5. The evidence in this record indicates that she is an “inactive employee”; she has no earned income. Her gross income for MAPP purposes in March 2024, was determined to be \$1,8470.70, apparently in Social Security benefits related to a disability. (She has an auditory processing disorder and a brain injury with temporal lobe epilepsy.) She also receives Medicare Part A & B. See, Exhibits #1 & #2.
6. On February 1, 2024, the Department issued a Notice of Decision to the petitioner informing her that her MAPP eligibility would end, effective March 1, 2024, because her assets were in excess of the program’s limits. See, Exhibit #1.
7. The agency had determined that she owned \$1 value for an automobile, plus an “IRA” valued at \$34,324.96, and \$10 in a savings account, for total assets of \$34,335.96 in countable assets. See, Exhibit #1, at pp. 4 and 3.
8. On February 14, 2024, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the discontinuance of her MAPP benefits effective March 1, 2024, and requesting continued benefits. Her benefits were ordered by the Division to continue pending the hearing decision. See, the DHA “Appeal Notice” letter dated February 19, 2024, ordering continued benefits.
9. On March 18, 2024, the petitioner stated in an email to the Division that she did not disagree with the agency in its determination that her [REDACTED] account balance would place her over the MAPP program’s asset limit, but that she would be subjected to reduction by taxes and penalties, had debts to pay with the funds, and she planned to establish a MA-exempt burial asset with the proceeds too. She provided a copy of a Separation Benefit Application dated March 14, 2024, and a W-4R federal tax withholding certification requesting a 10% federal tax withholding from any payments from the

██████████. She stated that she had submitted these forms to ██████████, and that ██████████ informed her that it would take 60 – 120 days to receive a disbursement of her net pension balance as a separation benefit. See, Exhibit #2, attached email of ██████████ dated March 18, 2024.

10. At the hearing held on March 20, 2024, the petitioner asserted that she had filed the Separation Benefit Application of March 14, 2024, to the ██████████, and that the pension agency’s online information material stated that it would take 60-120 days for her to receive a disbursement. She also stated that the ██████████ rules provided that she could rescind the Separation Application prior to receipt of the funds. The record was held open for 10 days for her to provide a copy to the Division.
11. On or about March 20, 2024, the petitioner provided a copy of an online document entitled “Separation Benefits”, ET-3101, (REV 10/2/2023) that indicated at p. 5, that ██████████ would generally direct deposit any such separation benefit to (any supplied applicant’s account number) on approximately 60 – 120 days after receiving the application. See, Exhibit #3.
12. The petitioner does not have actual access to her ██████████ separation benefit funds at present. She will have access to them at a time unknown in the approximate time frame of mid-May to mid-July 2024. See, Exhibits #2 & #3.
13. The petitioner has not demonstrated in this record that her application for separation benefits has actually been received by ██████████ and is being processed; or that ██████████ has specifically indicated when she can expect disbursement.

DISCUSSION

The petitioner is subject to a periodic re-certification review now that the so-called pandemic emergency rules have been lifted and all recipients and applicants for MA and MA-Waivers affiliated cases. See, *DMS Operations Memo #23-35*, as Amended on November 14, 2023. This includes the re-instatement of the standard asset test limits for means-tested programs like the Medical Assistance Purchase Plan (“MAPP”) The countable asset limit for a one-person MAPP group is \$15,000. See, *Medicaid Eligibility Handbook*, at § 39.4.1.

Assets must be verified for MAPP under Medical Assistance Blind, Elderly and Disabled policies found under the *Medicaid Eligibility Handbook*, at §16.1. See, *Medicaid Eligibility Handbook*, at § 20.3.1. The *Handbook* provides for the following relevant guidance, in the parts relevant here, about assets availability:

16.2.1 Assets Availability Introduction

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).

Example 1: Sylvia has life insurance that she cannot convert to cash within 30 days. She has a letter from the insurance company stating when she will receive the money. It becomes available the day she receives the money. Enter an expected change date in CWW with the date the asset is expected to be available.

Medicaid Eligibility Handbook, §16.2.1 (ALJ's Note: two footnotes in the policy document about health reimbursement accounts and divestment by institutionalized persons that are not relevant to this case, are omitted here.)

I am mindful that the petitioner greatly relies upon the assistance she receives to function in her daily life and activities. But she must continue to establish that she meets the means test to continue to receive the MAPP coverage.

Here, the petitioner unilaterally informed the agency and the administrative law judge in a post-appeal email on March 18, 2024, that she had filed a "Separation Benefit Application" with [REDACTED] on March 14, 2024. She provides a copy of the application that she has hand-completed, but nowhere does it bear the hallmarks of receipt by the [REDACTED] agency. Indeed, she even stated offhand that she could act to rescind it prior to disbursement.

My conclusion based upon this record is that it is clear that the pension disbursement will be a countable asset when, and if, it is disbursed. The question really is, when can she access it? The petitioner must establish that she has applied for the asset to be disbursed and under the policy, as in Example 1 above, the entity withholding the asset she seeks to access must acknowledge the request and state when it will become available. Upon that proof, then the agency is to apply the above cited asset availability test. See, *Medicaid Eligibility Handbook*, §16.2.1.

Further, after it is disbursed, she may act to plan her affairs and her estate as she desires. She would be well-advised to consult legal counsel. In any event, the disbursement becomes an available countable asset for MAPP when accessible until it is shown to be in some other exempt form.

The matter is remanded for the agency to follow proper established verification procedures (see, *Medicaid Eligibility Handbook*, § 20.1.4, (while continuing benefits) and request that the petitioner timely verify in writing from the Wisconsin Department of Employee Trust Funds that her application has been received, is being processed, and an anticipated time date or date range

for disbursement. If the petitioner requests the agency to assist, it shall do so when she provides any necessary written consent [REDACTED] may require.

In short, the agency must act to verify whether the asset is unavailable for 30 days or more under *Medicaid Eligibility Handbook*, §16.2.1, using the process to do so contained in *Medicaid Eligibility Handbook*, § 20.1.4.

As a sidenote to the parties, the ORDER below is in the alternative form. That means that the petitioner *must* timely verify (as directed) that [REDACTED] received her application for separation benefits on a fixed date, and a statement of the date it anticipates it will be disbursed, **or her appeal will be dismissed without further action**. Such eligibility verification is the burden of the applicant/recipient. I would also note that [REDACTED]

[REDACTED]

I am confident that prompt assistance can be obtained by the petitioner for this simple separation benefit application verification matter.

CONCLUSIONS OF LAW

That the record is insufficient to establish that the petitioner’s pension asset may be unavailable for 30 days; it may be so unavailable, but the agency must use verification procedures (see, *Medicaid Eligibility Handbook*, § 20.1.4) to establish by sufficient documentation that the petitioner’s separation benefits application has been actually received by the pension agency, and there is an anticipated disbursement date or date range.

THEREFORE, it is ORDERED

That the matter is remanded to the Department’s agents with instructions to: immediately act to request from the petitioner verification (as indicated in *Medicaid Eligibility Handbook*, § 20.1.4) of the receipt of an application for separation benefits from her and an anticipated net benefits disbursement date or date range from the [REDACTED] (from the petitioner), providing her 10 days to verify; continue her benefits pending verification; and when verification is timely received, determine if her pension asset is available or unavailable, with a final determination of MAPP eligibility and written notice. *IN THE ALTERNATIVE*, if the petitioner fails to timely verify the separation benefits application receipt and anticipated disbursement date or date range, then her appeal is dismissed, and the agency is to act to discontinue her MAPP coverage with timely and adequate advance written notice. These actions shall be completed within a total of 20 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 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

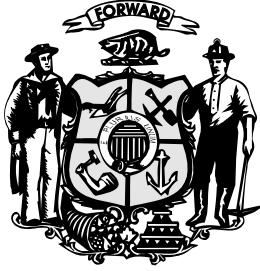
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 27th day of March, 2024



\s _____
Kenneth D. Duren
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 27, 2024.

Columbia County Health & Human Services
Division of Health Care Access and Accountability