



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



**DECISION**  
Case #: MAP - 211814

**PRELIMINARY RECITALS**

Pursuant to a petition filed on January 19, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Marquette County Department of Human Services regarding Medical Assistance (MA), a hearing was held on March 6, 2024, by telephone.

The issue for determination is whether

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Petitioner's Representative:



Respondent:

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


By:

Marquette County Department of Human Services  
480 Underwood Avenue  
PO Box 99  
Montello, WI 53949-0099

**ADMINISTRATIVE LAW JUDGE:**

John Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Marquette County.
2. Petitioner was enrolled in the Medicaid Purchase Plan program (MAPP).
3. Petitioner receives SSI.

4. The agency learned of the [REDACTED] Family Trust and considered it an available asset to petitioner.
5. The agency terminated enrollment in the MAPP due to petitioner having assets over the \$15,000 limit.
6. The trust is an irrevocable trust created under petitioner's mother's will. The trust was funded from petitioner's parents' assets for the purpose of providing for the health and support of petitioner.
7. A trustee has sole discretion to apply funds from the income or principal of the trust for Petitioner's needs. The trustee has the sole discretion to direct payments from the trust or terminate the trust.. The full trust document is in the record as an exhibit.
8. On December 18, 2023, the agency issued a notice of decision to the Petitioner informing him that his enrollment in MAPP would terminate effective December 1, 2023 due to assets exceeding the program limit. The notice informed the Petitioner that the agency counted the trust as an available asset.
9. On January 19, 2024, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

### DISCUSSION

The MAPP program allows disabled individuals to work but to retain eligibility for MA. Wis. Stat., §49.472; Medicaid Eligibility Handbook ("MEH") § 26. If net income is below 250% of the federal poverty level, the person is eligible for the program. Wis. Adm. Code, §DHS 103.03(8)(b); MEH § 26.4.2. The asset limit for MAPP is \$15,000. Wis. Adm. Code, §DHS 103.03(8)(c), referring to Wis. Stat., §49.472(3)(b); Handbook, App. 26.4.1.

The issue in this case is whether the agency correctly counted the trust assets as available assets to the Petitioner. The agency relied on the provisions in the Medicaid Eligibility Handbook (MEH) §§ 16.6 and 16.6.5 to determine that the trust is a countable asset.

The Petitioner asserts that the trust is not a countable asset.

The trust in this case is considered a "third party" trust because it is established with assets that belong to someone other than the MA applicant. As such, it is not governed by Wis. Stat. § 49.454 which applies to trusts established with resources or assets of the MA applicant (known as first party trusts).

The *Medicaid Eligibility Handbook* explains that:

*If the resources of someone other than the individual or their spouse (i.e., a third party), were used to form the principal of an irrevocable trust, the trust principal is not an available asset **unless the terms of the trust permit the individual to require that the trustee distribute principal or income to him or her.***

*MEH* at Section 16.6.4.1 (emphasis added). In this case, the Petitioner has no legal authority to revoke or terminate the trust or to direct the use of trust assets. That discretion is solely in the trustee. Petitioner cannot sell his interest in the trust. Petitioner cannot **require** any action by the trustee or effect any action on the trust itself. In other words, the funds in the trust are not available to the Petitioner. The fact that the

trust distributions are, under the terms of the trust, for the benefit of petitioner does not mean he has any authority under the terms of the trust to require distributions to him.

In this case, the third-party trust formed and funded by the Petitioner's mother, with no legal authority on the part of the Petitioner to revoke or terminate the trust and no authority to direct the use of the funds, is not a countable asset in determining the Petitioner's eligibility for MA.

### CONCLUSIONS OF LAW

The agency should not count the funds in the trust as countable assets in determining the Petitioner's MA eligibility.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency to re-determine the Petitioner's MA eligibility without counting the remaining assets in the trust. The agency shall send a new notice to the Petitioner regarding his MA eligibility with new appeal rights. 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, 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**

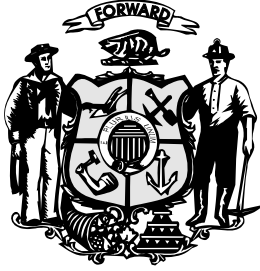
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 8th day of April, 2024



\s \_\_\_\_\_  
John Tedesco  
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 April 8, 2024.

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