



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MGE - 212254

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on February 21, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dunn County Department of Human Services regarding Medical Assistance (MA), a hearing was held on April 2, 2024, by telephone.

The issue for determination is whether the agency correctly denied medical assistance eligibility because petitioner's assets exceed the program limit.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner's Representative:**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Respondent:**

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

By: Megan Boiteau

Dunn County Department of Human Services  
808 Main Street  
PO Box 470  
Menomonie, WI 54751

**ADMINISTRATIVE LAW JUDGE:**

Beth Whitaker  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Chippewa County.
2. On January 5, 2024, petitioner submitted an application for BadgerCare Plus or Medicaid benefits.
3. At the time of application petitioner owned an annuity investment account with [REDACTED] with a balance of \$22,712.33.
4. On February 7, 2024, the agency issued a notice to petitioner's representative instructing him to provide proof of a checking account balance and value of the [REDACTED] annuity account by February 26, 2024.
5. On February 19, 2024, petitioner's representative submitted proof that the surrender value of the [REDACTED] annuity account was \$23,733.73. (Exhibit D)
6. Petitioner has not yet begun receiving payments from the annuity and has the option to liquidate the account for its surrender value.
7. On February 20, 2024, the agency issued to petitioner's representative an About Your Benefits notice, informing him that the January 1, 2024 application for health care benefits was denied because of income over the Medicaid and Medicare Savings Program program limits and assets above the program limit for Community Waivers program. The decision regarding assets was based on counting \$22,186.90 as the asset value for an IRA and \$1,191.39 as the value of a checking account for total assets of \$23,378.29.

## DISCUSSION

The Medical Assistance/Community Waivers countable asset limit for an unmarried individual is \$2,000. An annuity is, under certain circumstances, a countable asset. There are different policies regarding how and when to count annuities issued prior to March 1, 2004 and after March 1, 2004. Petitioner's annuity was issued on November 3, 1989. The applicable policy provides as follows:

### 16.7.4.2 Annuities Purchased Before March 1, 2004

Annuities that can be surrendered (in the accumulation phase) The accumulation phase of an annuity is the period when the purchaser puts money into the annuity. During the accumulation phase, an annuity is an available asset because the annuitant can cash it in for its cash value.

Cash value (also known as surrender value) equals:

1. Total deposits made to the annuity. +
2. Earnings on the deposits not previously paid out. –
3. Withdrawals and surrender costs charged for withdrawal.

In determining the cash value, do not deduct income tax withheld or tax penalties for early withdrawal.

Annuities in the pay-out phase (cannot be surrendered)

The pay-out (annuitization) phase begins at the time payments start going to the annuitant in accordance with the settlement option. The settlement option specifies the way the funds from the annuity will be paid out. It involves choosing the amount of each payment, how often payments will be made, and the length of time over which the payments will be made.

An annuity becomes an unavailable asset on the date the settlement option is made final. This means even if the payment starts months later, it is unavailable on the date the settlement option is made final.

Petitioner appeals the decision to count the value of an annuity investment account as an asset for purposes of a health care eligibility determination. Petitioner's representative stated that the account in question was created on November 9, 1998 and that petitioner was informed by someone associated with Great Rivers consortium that it was not subject to classification as an asset for Medicaid eligibility because it was purchased before March 1, 2004. He stated that it would not make sense to count the account as an asset because petitioner was scheduled to annuitize the account in November 2024 and receive \$22,445.80 annually for life and because the Medicaid program was the primary beneficiary of the minimum death benefit of \$243,711.21.

The agency relies on the Medicaid Eligibility Handbook cited above to conclude that because the asset in question is still in the accumulation phase rather than the payout phase it is an available asset that must be counted. Petitioner did not dispute this. He testified that the account can be surrendered for a total value of \$23,733.73. It is also not disputed that the surrender value exceeds the medical assistance program limit. The agency corrected counted the petitioner's assets and correctly determined that she is ineligible for medical assistance because her assets exceed the program limit.

Petitioner's represented stated clearly that it would not make financial sense to surrender the account for a total value that is little more than one annual payment that will be available for petitioner's lifetime as early as November 2024. He testified that this is a unique situation because the investment account is very valuable. Regardless, I do not have the authority overturn or alter the agency's determination to provide relief from the agency's rules in the interest of fairness or common sense. It is the longstanding policy of the Division that the Department's assigned administrative law judges do not possess equitable powers. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. The relevant rule is that the asset must be counted if it is possible to surrender it, regardless of whether it makes financial sense to do so. The agency lacks the discretionary authority to disregard the rules, as do I. The agency has correctly followed the rules that govern its eligibility determinations.

### CONCLUSIONS OF LAW

The agency correctly determined that an annuity owned by petitioner can be surrendered, is an available asset and must be counted for Medicaid eligibility purposes and that, therefore, petitioner's assets exceed the Community Waivers program limit making her ineligible for benefits.

**THEREFORE, it is**

**ORDERED**

That the petition for review is dismissed.

### **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.

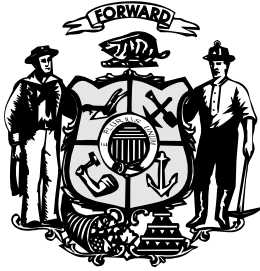
## APPEAL TO COURT

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 29th day of April, 2024

  
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Beth Whitaker  
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 29, 2024.

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

