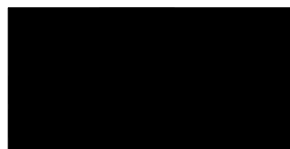




FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MDV - 213193

PRELIMINARY RECITALS

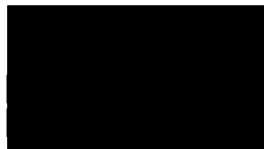
Pursuant to a petition filed on April 23, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane Cty. Dept. of Human Services regarding Medical Assistance (MA), a hearing was held on June 12, 2024, by telephone.

The issue for determination is whether the agency correctly determined that the surrender value of a life insurance policy was an available asset the start date of the divestment penalty period for long-term care Medicaid benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Attorney John F. Koenig
Elder Advisors Law
101 South Main Street Ste #100
Janesville, WI 53545

Respondent:

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

By: Leah Jorgensen
Dane Cty. Dept. of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. On or before February 5, 2024, petitioner contacted [REDACTED].
3. On February 5, 2024, [REDACTED] sent to petitioner a letter containing information about policy [REDACTED].
4. On February 23, 2024, petitioner divested assets in the amount of approximately \$42,000.
5. On February 27, 2024, Elder Advisors Law LLC filed an application for Medicaid on behalf of petitioner, in which it asserted that petitioner had a Life Insurance policy with a surrender value of \$8,693.30 and that “[REDACTED] is unable to access funds within 30 days.”
6. On March 11, 2024, [REDACTED], petitioner’s power of attorney, signed before a notary public a form entitled “Multipurpose Service Request” regarding policy number [REDACTED] for insured [REDACTED] E. [REDACTED].
7. The Multipurpose Service Request form signed on March 11, 2024 is completed to elect to terminate the policy and receive the net cash value and to elect no income tax withholding.
8. On or before March 19, 2024, the Multipurpose Service Request form electing cash surrender was submitted to [REDACTED].
9. On March 22, 2024, the agency issued to petitioner a notice entitled Required Next Steps to Receive Your Benefits instructing petitioner to provide, among other things, proof regarding the ability to sell the [REDACTED] Life insurance policy [REDACTED] and its cash surrender value.
10. On April 3, 2024, a representative of [REDACTED] stated to the agency representative that the time required to make cash surrender value available is 7 days after it is requested.
11. On April 4, 2024, [REDACTED] issued to petitioner a check in the amount of \$8,710, representing the cash surrender value of policy [REDACTED].
12. Between April 4, 2024 and April 22, 2024, petitioner received the cash surrender funds in the form of a check from [REDACTED].
13. On April 22, 2024, the cash surrender check was deposited into petitioner’s checking account.
14. On April 17, 2024 the agency issued to petitioner an About Your Benefits notice, informing him that effective April 1, 2024 – September 30, 2024, petitioner was not enrolled in Medicaid because he was over the income limit and had a divestment penalty period from April 1, 2024 to September 2, 2024 based on a divestment amount of \$49,000.

DISCUSSION

In determining eligibility for MA, the agency must consider an applicant’s assets and whether the assets exceed the asset limit for eligibility. The MA Handbook (MEH) states that the agency must consider whether an asset is available to an applicant in determining the applicant’s countable assets. MEH, § 16.2. An asset is unavailable if the member lacks the ability to legally access the asset. MEH, § 16.2.1.

Petitioner acknowledges a divestment of assets and does not dispute the divestment penalty, documented in the agency’s April 17, 2024 notice and calculated by dividing the divestment amount of \$49,000 by the average nursing home daily rate of \$315.61 to yield a 155 day penalty period. Petitioner did not dispute or provide evidence regarding petitioner’s monthly income. The issue at hearing was the start date of the divestment penalty period, specifically whether the agency correctly determined the start date of the divestment period when it found the [REDACTED] Life Insurance Policy an available asset and therefore found that before April 1, 2024 petitioner did not meet “all other Medicaid nonfinancial and financial eligibility requirements” necessary for the divestment penalty period to begin. See MEH 16.2 and 17.3.3.

In its February 27, 2024 and March 19, 2024 letters to the agency, petitioner’s attorney asserted that the funds from surrender of his life insurance policy were not available to petitioner within 30 days. It is not clear what the basis for the assertions were. On February 27, 2024, the petitioner had not even requested surrender. On March 19, 2024, based on counsel’s representation, the requested had been made, however there is no evidence that the funds would not be available for 30 days after the request. In fact, the funds were issued on April 4, 2024, within 30 days of March 19, 2024. At hearing, the position taken was that the funds were not available within 30 days of March 11, 2024, the date the application for surrender was signed. There is no evidence in this record that the request was actually filed with the insurance company on March 11, 2024. I find that it was filed sometime between March 11 and March 19, 2024. The funds were issued to petitioner in the form of a check on April 4, 2024. Counsel for petitioner represents that the funds were actually received on April 11, 2024. There was no testimony or other evidence of that. However, the availability of the asset is determined by when the asset could be made available, not when it was actually received. Basing the determination on when something is actually received in the mail would deny the agency any opportunity to verify that fact and would allow any petitioner the opportunity to render the asset unavailable simply by having payment mailed and declining to check the mail box. The cash surrender funds were available to petitioner on April 4, 2024. Assets are correctly considered available when the owner had a legal right to the money, the legal ability to make the money available and when “the asset can be made available in less than 30 days.” MEH 16.2.1. The criteria for finding an asset unavailable were not met.

Counsel for petitioner referred to Example 1 at MEH 16.2.1 which states: “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 in CWW with the date the asset is expected to be available.” First, the example refers to a case in which the assets are known in advance to be unavailable within 30 days based on a letter from the insurance company. This cannot possibly rely on when Sylvia actually receives funds sent through the mail, because the insurance company would not know when in the future her mail would arrive. Second, the example language uses the terms “received” and “available” interchangeably. The context of the handbook language makes it clear that it is availability, not actual receipt, that is the determining fact.

The agency presented credibly evidence that it correctly determined that life insurance cash surrender funds were available to petitioner for the months of February and March 2024, rendering him over the asset limit for Medicaid eligibility. Because he was over the asset limit, he did not meet all Medicaid nonfinancial and financial eligibility requirements. MEH 17.3.3. The agency then correctly determined the start date of the divestment penalty period, April 1, 2024, when all requirements for Medicaid eligibility in MEH 17.3.3 were met.

CONCLUSIONS OF LAW

I find that the agency correctly determined petitioner’s Medicaid eligibility.

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, 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

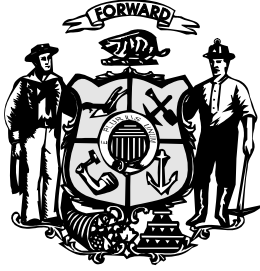
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 17th day of June, 2024

 _____

Beth Whitaker
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705-5400

Telephone: (608) 266-7709
FAX: (608) 264-9885
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Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 17, 2024.

Dane Cty. Dept. of Human Services
Division of Health Care Access and Accountability
Attorney John Koenig