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[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MGE - 215065

PRELIMINARY RECITALS

Pursuant to a petition filed on September 14, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on October 24, 2024, by telephone.

The issue for determination is whether the agency correctly denied Petitioner's enrollment in the Community Waivers program for exceeding the program's asset limit.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Stacy Green
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Wendy I. Smith
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 96-years-old resident of Milwaukee County who received MA benefits under the Community Waivers Family Care program and the Medicare Savings program.
2. On July 9, 2024, Petitioner completed a renewal for MA with a household composition of one. Respondent's Exhibit 1.
3. Respondent's Asset Verification System (AVS) identified five savings certificates, a checking account, and a savings account in Petitioner's name at [REDACTED]. As of May 2024, the AVS identified the savings certificates totaling \$5,275.28, the checking account totaling \$811.14, and the savings account totaling \$1,226.01. Respondent's Exhibit 1.
4. Respondent requested that Petitioner provide verification documents for her income and assets by July 29, 2024. Respondent's Exhibit 1.
5. The savings certificates at [REDACTED] are not designated as payable only for burial expenses. However, Petitioner does intend for these funds to be used for transportation of her body to Brownsville, Texas for burial. Petitioner's Exhibit 1.
6. Prior to Petitioner's most recent renewal at issue here, Petitioner reported to the agency that she had savings certificates with [REDACTED]. The agency previously designated these reported savings certificates as "unavailable" and did not use them in calculating Petitioner's countable assets. When Petitioner renewed, these savings certificates were identified again and set to "available" assets. Respondent's Exhibit 1.
7. In a notice dated August 14, 2024, Respondent notified Petitioner that she was ineligible for the Community Waivers program due to having assets in excess of program limits, effective September 1, 2024. The notice listed her counted assets as \$4,086.50. Her assets listed include burial assets (\$6,759.00), savings account (\$876.04), and the savings certificates (\$3,265.02).
8. Petitioner has a death benefit life insurance policy through [REDACTED] Insurance Company (an affiliate of [REDACTED]) with a death benefit value, cash value, and surrender value of \$11,963.26, as of September 5, 2024.
9. Petitioner has a prearranged funeral services agreement with [REDACTED] Funeral Home in Milwaukee, Wisconsin. Petitioner irrevocably assigned ownership of a [REDACTED] burial trust to this funeral home in return for the delivery of funeral and burial expenses for an amount of \$3,995.00. The remainder of the agreement balance for [REDACTED] appears to be payable by Petitioner's [REDACTED] Insurance policy.
10. Petitioner has a prearranged funeral services agreement with [REDACTED] Funeral Home in Brownsville, Texas. The services were to be paid for through a Memorial [REDACTED] annuity in the amount of \$2,764.00.
11. Petitioner now appeals to the Division of Hearings and Appeals

DISCUSSION

The Medicaid Community Waivers programs pay for long-term care services and supports to permit the elderly, blind, or disabled to remain in a home or community setting not normally covered by Medicaid. *Medicaid Handbook* § 28.1. To be eligible, an applicant must meet certain financial and non-financial requirements. The financial requirements depend on an applicant's financial eligibility group: Group A, Group B, or Group B Plus. *Id.* at § 28.6.

Community Waivers applicants in all eligibility groups must meet the general Medicaid asset limit of \$2,000.00 for a single person. *Id.* at §§ 16.1, 39.4.1; Wis. Stat. § 49.47(4)(b)(3g). When calculating an applicant's assets, the agency will count all available assets, including:

1. Joint accounts (see Section 16.4.1 Joint Accounts)
2. Burial assets (see Section 16.5 Burial Assets)
3. Savings account
4. Checking account
5. Cash available
6. Stocks, bonds, CDs.
7. Loans (see Section 16.7.2 Loans)
8. Life insurance (see Section 16.7.5 Life Insurance)
9. Non-burial trusts (see Section 16.6 Non-burial Trusts)
10. Land contract (see Section 16.7.12 Land Contract)
11. Mortgage (see Section 16.7.13 Mortgage)
12. Trailer home (see Section 16.8.1.2 Non-motorized Trailer Homes)
13. Non-home real property. (see Section 16.8 Real Property)
14. Some vehicles (see Section 16.7.9 Vehicles (Automobiles), 18.4 Spousal Impoverishment Assets)

The EBD fiscal group's assets must be within the appropriate asset limit before any member of that group can qualify for Medicaid. EBD fiscal groups who have assets in excess of the appropriate asset limit are ineligible for Medicaid.

Id. at § 16.1.

An asset will be considered "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.

Id. at § 16.2.1 (emphasis in original).

Some assets designated for burial expenses are exempt from an applicant's countable assets, either in whole or in part. For example, irrevocable burial trusts, burial insurance policies, and life insurance policies that are irrevocably assigned pursuant to a burial contract can be considered exempt assets, subject to some limitations. *Id.* at §§ 16.5.1, 16.5.2, 16.5.3.

"Burial funds" may also be exempt assets for Elderly, Blind, and Disabled Medicaid members. Burial funds are those that are set aside for burial expenses. *Id.* at § 16.5.5; Wis. Stat. § 49.47(4)(b)(3). Anyone claiming a burial fund must sign a statement identifying the fund's location, type, amount, and account number, including the month and year in which they first intended to set the fund aside for burial. *ME Handbook* § 16.5.5. The fund set aside for burial must be identifiable, but not necessarily segregated from other funds. *Id.*

Section 16.5.5 of the *Medicaid Eligibility Handbook* directs the agency to calculate a burial fund exemption as follows:

To find the amount of a burial fund that can be exempted, add together the following:

- The face value of the person's irrevocable burial trusts (see Section 16.5.1 Irrevocable Burial Trusts)
- The face value of all of their life insurance policies whose cash value is exempt (see Section 16.7.5 Life Insurance)
- The face value of their exempt burial insurance (see Section 16.5.2 Burial Insurance)
- The cash surrender value of revocably assigned LIFBC (see Section 16.5.3.2 Revocable Assignment of Life Insurance-Funded Burial Contracts)
- The burial funds portion of irrevocably assigned LIFBC (see Section 16.5.3.1 Irrevocable Assignment of Life Insurance-Funded Burial Contracts)

If the total value of the exemptions above is \$1,500 or more, no additional burial assets are exempt.

If the total is less than \$1,500, subtract the total from \$1,500. The result is the amount of the person's burial fund total that is exempted.

The question in this appeal is whether Petitioner's savings certificates, which she intends to use for transportation expenses associated with burial, should be counted assets or should be exempt under the program rules relating to burial assets. The certificates are best described as "burial funds" subject to the limited exemption provided in Section 16.5.5 above. Petitioner's insurance- and annuity-funded funeral and burial contracts were not counted as assets by the agency and are not at issue in this appeal but are relevant to the calculation of any exemption for additional burial funds.

At the hearing, Respondent's representative testified that the agency's Asset Verification System identified five savings certificates in Petitioner's name at [REDACTED]. These certificates totaled \$5,275.28 as of May 2024. Petitioner testified that these savings certificates are not specifically designated by her bank as payable for burial expenses only, but she does intend to use them for transportation of her body to Brownsville, Texas for burial upon her death. This expected transportation expense will not be covered by her existing insurance- or -annuity funded burial contracts.

Petitioner further testified that these certificates were previously reported to the Respondent as intended for burial expenses and the agency deemed them to be "unavailable assets." Respondent's representative

confirmed that these assets were previously set as “unavailable” but there were no case comments explaining the designation. It is unclear from the record whether Petitioner previously completed a signed statement designating the certificates as burial funds, as required by program rules. It is also unclear from the record whether the agency previously calculated a burial fund exemption, as required by program rules.

I note that the relevant program rule does not require that burial funds be specifically designated or segregated in an applicant’s bank. However, a signed statement with identifying information about the funds is required. Petitioner presented credible testimony that she has been transparent with her reporting of the savings certificates as intended for burial expenses.

Even if I assume that Petitioner did previously supply a signed statement detailing the funds to be used for burial expenses, or can do so in the future, the agency must still perform a calculation to determine the extent of the exemption, if any. If the total of Petitioner’s other burial assets (as stated in Section 16.5.5) exceeds \$1,500.00, no additional exemption is available for the burial funds. Here, Petitioner has an irrevocable burial trust with [REDACTED] in the amount of \$3,995.00. Further, she has a death benefit policy that appears to be at least partially assigned to [REDACTED] Funeral Home with a death benefit value, cash value, and surrender value of \$11,963.26, as of September 5, 2024. These assets exceed \$1,500.00, rendering no further exemption for other burial funds.

While I cannot definitively see from the record that the agency assessed these certificates as burial funds in accordance with program rules, its ultimate determination that the certificates are not exempt is correct. At the time of the agency’s determination, the certificates were not designated for burial. I have no reason to doubt that Petitioner does intend to use those funds for burial. However, Petitioner has access to those funds and could decide to use them for other purposes, such as payment for shelter, food, medical care, and other expenses, if she changed her mind. Based on the record before me, the savings certificates were available assets, as defined by Section 16.2.1, and the agency properly included them in its asset calculation.

CONCLUSIONS OF LAW

The agency correctly denied Petitioner’s enrollment in the Community Waivers program for exceeding the program’s asset limit.

THEREFORE, it is

ORDERED

That Petitioner’s appeal 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.

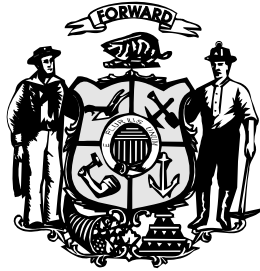
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 1st day of November, 2024

\s _____
Wendy I. Smith
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on November 1, 2024.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability