



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: MGE - 215203

PRELIMINARY RECITALS

Pursuant to a petition filed on September 23, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services regarding Medical Assistance (MA), a hearing was held on November 7, 2024, by telephone.

The issue for determination is whether the agency correctly denied Petitioner's MA renewal.

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: Kristy Kasper
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:
Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. On June 14, 2024, Petitioner submitted a renewal to continue receiving MA benefits with Community Waivers. Petitioner's coverage was extended through August 31, 2024, during the renewal process in order to allow Petitioner time to submit requested verification regarding his assets.
3. On August 7, 2024, the county agency received the requested asset verifications. Petitioner's assets were verified to be \$16,378.62 related to stocks he owned. Therefore, Petitioner was determined to be over the \$2000 asset limit to be eligible for MA.
4. On September 18, 2024, the county agency sent Petitioner a notice informing him that his MA renewal was denied because he was determined to be over the asset limit. Subsequently, he was disenrolled from the family care waivers program, with Community Care being the family care program agency.
5. On November 4, 2024, Petitioner was reenrolled in MA and in family care after verifying that his assets were now below \$2000.
6. Petitioner's wife filed an appeal on his behalf of his disenrollment in September 2024 due to being over the asset limit. Petitioner's wife is seeking for coverage for Petitioner between September 1, 2024, through November 4, 2024, the period where he was disenrolled due to being over the asset limit.
7. During the hearing, Petitioner's wife testified that after she completed Petitioner's renewal in July 2024, a representative from Community Care, John Johnson, informed her that Petitioner was over the asset limit and that she would have to spend down those assets in order for Petitioner to obtain coverage. Petitioner's wife interpreted this conversation to mean that she was being advised to spend down her own personal checking account money. Petitioner's wife then proceeded to empty her own personal checking account. Petitioner's wife testified that she then called the county agency and spoke with Kristy Kasper. She informed Ms. Kasper that she spent down her own personal bank account for Petitioner to be eligible for MA. Ms. Kasper informed her that she received inaccurate information and that she was never required to spend down her own personal checking account, it was the stocks that were the issue. Petitioner's wife stated that if she had known it was the stocks that were the issue, she would have taken care of that.
8. The county representative, Kristy Kasper, also testified during the hearing. She stated that she recalled the conversation with Petitioner's wife where his wife stated that she was told to spend down her personal bank account. Ms. Kasper testified that she had informed Petitioner's wife at that time that that was inaccurate. She informed Petitioner's wife that the stocks were the problem, not her personal bank account. Ms. Kasper has no direct knowledge of the conversation between Petitioner's wife and anyone at Community Care. Ms. Kasper only knows what Petitioner's wife told her about those conversations.
9. A Community Care representative, Kelly Her, also testified during the hearing. Ms. Her testified that she spoke with Petitioner's wife back in August 2024 and told her at that time that the stocks were the problem. Further, Petitioner's wife was informed during the initial MA application that the stocks may be a problem for eligibility. Due to Covid-19 policies, Petitioner was not required to complete a renewal for two years. Thus, this is why the stocks are only now being determined to be an issue.

DISCUSSION

EBD Medicaid, is a health insurance program available for individuals who are elderly, blind, or disabled and who meet certain financial and non-financial eligibility criteria. *Wisconsin Medicaid Eligibility Handbook (Medicaid Handbook)* § 24.1. A participant may only have countable assets of \$2,000.00 or less, to be financially eligible for EBD Medicaid. *Id.* at §§ 15.1, 24.1, 39.4.1.

At the hearing, the county agency testified that Petitioner's MA renewal was denied because he had stocks in excess of \$16,000. This value exceeds the Medicaid program asset limit of \$2,000.00.

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, participants must meet certain financial and non-financial requirements. Community Waivers participants must meet the general Medicaid asset limit of \$2,000.00. *Id.* at §§ 16.1, 39.4.1. In the November 2024 notice, Petitioner was denied eligibility in the Community Waivers programs as having assets exceeding the program limits. Petitioner owned stocks in excess of \$16,000. These stocks exceeded the Community Waivers program asset limit of \$2,000.00. The agency then correctly denied Petitioner's renewal for this program due to being over the asset limit.

Petitioner's wife testified on his behalf. Petitioner's wife testified that when Petitioner first applied for MA, she was told that his stocks may be an issue. However, Petitioner was approved to continue receiving MA due to Covid-19 policies in place that put a hold on any renewals for several years. Now, with Covid-19 policies ended, Petitioner was required to complete a renewal. Petitioner's wife stated that she talked to a Mr. Johnson at Community Care and was told that Petitioner was over the asset limit for eligibility, and she believed this meant she had to spend down her own personal bank accounts. In reality, her personal bank accounts were not the issue, Petitioner's stocks were the issue. Petitioner's wife testified that if she had known the stocks were the issue, she would have taken care of it.

However, Kelly Her, from Community Care also testified during the hearing. Ms. Her noted that she personally spoke with Petitioner's wife in August and informed her that the stocks were the issue. Ms. Her stated that she never informed Petitioner's wife that she was required to spend down her own bank accounts. Ms. Her also reiterated that Petitioner's wife acknowledged during her testimony that the stocks were mentioned to her when she first applied.

In this case, the law is clear with respect to MA and Community Waiver's eligibility. A person is not eligible if his assets exceed \$2000. There is no question that Petitioner's assets exceeded \$2000 because he owned stocks in excess of \$16,000. I have no authority to create an exception to the rules. I have no power to disregard the clear directive that assets over \$2000 bar eligibility, even under sympathetic circumstances. Clearly, there was a misunderstanding that took place between Petitioner's wife and Community Care. However, I cannot create an exception due to a misunderstanding.

I have no authority to make decisions based on equity or fairness. I am required to follow the rules and regulations as written without any ability to alter the outcome due to dire circumstances. It is the long-standing policy of the Division of Hearings and Appeals that the 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). As such, I cannot issue a decision couched in terms of fairness. This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. I am without any equitable powers to direct any remedy beyond the remedies available under law. To the extent that Petitioner's wife is making any sort of detrimental reliance argument related to her conversations with Mr. Johnson, this is not the correct venue for such an argument.

CONCLUSIONS OF LAW

The agency correctly denied Petitioner's renewal for MA in the Community Waivers programs due to being over the program asset limits.

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.

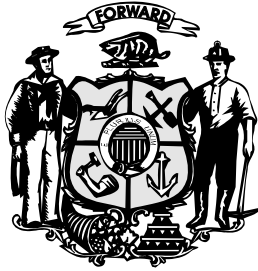
APPEAL TO COURT

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 12th day of December, 2024

\s _____
Nicole Bjork
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 December 12, 2024.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability