



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: MGE - 215845

PRELIMINARY RECITALS

Pursuant to a petition filed on November 5, 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 December 12, 2024, by telephone. The hearing record was left open until January 8, 2025, so that the petitioner and the agency could submit documents.

The issue for determination is whether this appeal is untimely.

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: Emily Clements
Dane Cty. Dept. of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Kate J. Schilling
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a married resident of Dane County who had a severe stroke prior to the events listed below and required extensive medical care and treatment. She would have been age 51 or 52 at the time of the stroke.
2. In November 2022, she applied for Social Security Disability (SSDI) benefits through the Social Security Administration.
3. On February 6, 2023, the petitioner was evaluated for community waivers programs by the Aging and Disability Resource Center (ADRC). She passed the functional screen administered by ADRC staff, but also required a disability determination since she was under age 65.
4. On February 28, 2023, the petitioner applied for long-term care Medicaid, specifically community waivers programs.
5. At some point, the petitioner left the hospital/skilled nursing facility and returned to her home. Due to being on a ventilator, she needed skilled nursing care from a nurse each day. Since the petitioner's Medicaid was still pending, she incurred costs of approximately \$30,000 each month to privately pay for skilled nursing care services in the home.
6. At some point, the couple entered into a promissory note for \$136,000, which is believed to be for the petitioner's in-home nursing care expenses. The couple is repaying the note at \$2,000 per month.
7. On April 18, 2023, the agency finalized the asset assessment and sent the petitioner a notice stating that the couple's countable assets were \$369,518.02, and that they would need to spend down to \$148,620 (plus \$2,000 for the institutionalized spouse) in order to be eligible for long-term care Medicaid.
8. On July 7, 2023, the petitioner received a favorable disability determination, with a disability onset date as May 2022.
9. On July 23, 2023, the petitioner submitted a new long-term care Medicaid application to the agency requesting a three month backdate of coverage back to April 2023. After the processing of verifications, the agency ultimately approved the petitioner for Medicaid as of July 1, 2023. However, in order for a person to enroll in FamilyCare, they have to enroll with a Managed Care Organization (MCO) through their county ADRC.
10. On August 25, 2023, the petitioner enrolled into an MCO with the FamilyCare Medicaid program.
11. On August 29, 2023, the petitioner was sent notice stating that she was eligible for community waivers programs as of July 1, 2023; however, she was not eligible for community waivers between April 1, 2023 and June 30, 2023 due to being over the Medicaid asset limit. This notice stated that the couple's countable assets for April and May 2023 were \$360,749, and \$380,309.79 in June 2023. This notice also contained appeal rights that stated an appeal of this determination must be received by the Division of Hearings and Appeals by October 16, 2023.

12. The petitioner has been on community waivers programs continuously since August 2023; however, her appeal in this matter relates to the uncovered period of time between April 1, 2023 and June 30, 2023.

DISCUSSION

The federal Medicaid Catastrophic Coverage Act of 1988 (MCAA) included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat., §49.455(1).

When initially determining whether an institutionalized spouse is eligible for MA, county agencies are required to review the combined assets of the institutionalized spouse and the community spouse. *Medicaid Eligibility Handbook (MA Handbook)* §18.4.1. All available assets owned by the couple are to be considered. Homestead property, one vehicle, personal and household possessions, and burial spaces are all exempt. In long-term care Medicaid cases, the IRA of a community spouse is exempt as well. The couple's total non-exempt assets then are compared to an "asset allowance" to determine eligibility.

The asset allowance for this couple was determined by the agency to be \$148,620. *MA Handbook* § 18.4.3; see also Wis. Stat., §49.455(6)(b). An additional \$2,000 (the MA asset limit for the institutionalized individual) is then added to the asset allowance to determine the asset limit under spousal impoverishment policy. If the couple's assets are at or below the determined asset limit, the institutionalized spouse is eligible for MA. If the assets exceed the above amount, as a general rule the spouse is not MA eligible. If a married couple has countable assets at or less than \$52,000, the institutionalized spouse is eligible for Medicaid immediately without any spenddown required. *MA Handbook* §18.4.3.

In this case, the couple's house, one vehicle, and the community spouse (██████████) IRAs and retirement accounts were all exempt assets. *MA Handbook* § 16.7.20. The countable assets would be their savings and checking accounts, the cash value of any life insurance policies with more than \$1,500 in face value, any additional vehicles, the institutionalized spouse's (██████████) IRA and retirement assets, as well as any other real property. Their annuities were ultimately determined by the agency to not be a countable asset, but the income generated by the annuity is countable income. The couple's life insurance policies were determined to be term policies that did not have cash value. The couple provided verification along with their Medicaid application that ██████████' IRAs had \$0 value, and that ██████████ IRAs contained \$438,380.74, which was exempt. Furthermore, the couple provided verification that they had just recently sold their cottage valued at approximately \$289,000. The money from the sale of the cottage and other assets was combined into what was ultimately determined by the agency to be Medicaid-compliant annuities.

Based on testimony at the hearing, the petitioner and her husband were under the impression that the petitioner's Medicaid application could not be approved until the Disability Determination Bureau (DDB) made the disability decision on her Social Security Disability application. Generally speaking, this is correct. However, the petitioner may have qualified for a Presumptive Disability determination given her recent stroke and disabling conditions. *MA Handbook* § 5.9.

5.9.1 Presumptive Disability Introduction

Federal SSI law and regulations state that the SSI program can find a person to be presumptively disabled, and the person will be treated as a person with a disability until a final disability determination can be completed. To be treated as

presumptively disabled by SSI means that the applicant's benefits can begin before SSA, or its contracted agency, has formally determined the person to be disabled.

Wisconsin's Medicaid program also allows a determination of presumptive disability.

Presumptive disability is a method for temporarily determining a disability for a person while a formal disability determination is being done by Disability Determination Bureau (DDB). Presumptive disability is determined either by DDB, or in some circumstances, the IM agency. The regular disability application process (see [Section 5.3 Disability Application Process](#)) must still be completed for persons with a presumptive disability. **A presumptive disability decision stands until DDB makes its final disability determination.**

(Emphasis added.) *MA Handbook* § 5.9. See also WI DHS form F-10130 (last updated July 2024), <https://www.dhs.wisconsin.gov/forms/fl/f10130.pdf>. Typically, a person must meet the qualifications in both Section I and Section II in order to be determined presumptively disabled. Section I requires an urgent need for care or services, without which the person would be at risk of institutionalization. The testimony at the hearing was that the petitioner was not aware that the presumptive disability form was an option to temporarily meet the disability standard while the ultimate determination was pending with the DDB. In reviewing the file, it appears that the petitioner was working with an attorney at the time of her February 2023 Medicaid application as the application was faxed to the agency by a law office, and there are references in the case notes to petitioner's attorney calling the agency at certain points while the application was being processed. (However, the petitioner was not represented at the hearing by an attorney, so it is unclear at what time that relationship ended.)

The petitioner believes that she was asset-eligible for Medicaid at or shortly after the date of her February 28, 2023, application for Medicaid. She alleges that the agency miscalculated the value of the Community Spousal Asset Share because most of their countable assets had been sold or cashed out and then transferred into their annuities immediately before the Medicaid application was submitted. However, since the couple thought that they had to wait until the disability determination was made by the DDB, they did not aggressively work to correct these errors with the agency at that time. While the petitioner and her husband's testimony at the hearing was very credible, I am not able to evaluate the merits of this case as the appeal was not filed with the Division of Hearings and Appeals until November 5, 2024, more than a year later than the appeal was due.

The Division of Hearings and Appeals can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if an appeal is untimely. Medicaid appeals, which include the denials of the February 28, 2023 and July 23, 2023 applications for (retroactive) Medicaid involved in this case, must be filed within 45 days of the date of the negative action. See Wis. Stat. § 49.45(5); Wis. Admin. Code § DHS 104.01(5)(a)3; Wis. Admin. Code § HA 3.05(3); and see also 42 C.F.R. § 431.221(d). DHA must dismiss a hearing request that is not received within the 45 day time period. See Admin. Code § HA 3.05(4)(e).

CONCLUSIONS OF LAW

This appeal was untimely filed; therefore no jurisdiction exists for me to decide the case.

THEREFORE, it is

ORDERED

That the 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.

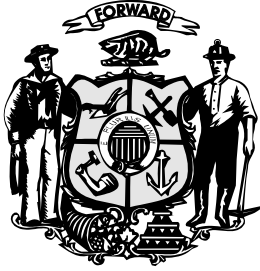
APPEAL TO COURT

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 Madison,
Wisconsin, this 17th day of February, 2025

Kate J. Schilling
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
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 17, 2025.

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