



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

MDV/172290

PRELIMINARY RECITALS

Pursuant to a petition filed February 25, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on April 26, 2016, at Madison, Wisconsin.

The issue for determination is whether the agency erred in its denial of the petitioner's request to recalculate a divestment penalty period as determined by the agency 11/20/15.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Petitioner's Representative:

[Redacted representative name]

Respondent:

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

By: [Redacted]
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County.
2. Petitioner applied for MA on July 23, 2015.

3. As part of its eligibility determination, the agency finds a divestment of assets by petitioner in the form of a \$55,016.52 promissory note to her daughter and a \$102,955.96 irrevocable trust. The agency issued a notice on 11/20/15 informing petitioner that the divestment of \$157,972.48 had been found. The agency also informed petitioner of a divestment penalty period from 7/1/15 to 3/15/17. That notice informed petitioner of a 45-day deadline to appeal the divestment penalty finding. No appeal was filed by petitioner.
4. On December 30, 2015, the petitioner's counsel requested that the agency recalculate the divestment period. Petitioner asserted that the \$55,016.52 divestment related to the promissory note had been cured.
5. On January 12, 2016, the agency issued a notice informing petitioner that it denied the request for recalculation.
6. On 2/25/16, petitioner filed a timely request for hearing from the denial of the recalculation request.

DISCUSSION

Initially, this is an appeal of the denial of the request for recalculation of the divestment. Petitioner believes she is entitled to a recalculation following purported cure of the promissory note component of the total divestment. This is not an appeal of the amount or correctness of the divestment as determined in November 2015 as that determination was not the subject of a timely appeal.

The Medicaid divestment rules allow for a recalculation of a divestment determination. *See Medicaid Eligibility Handbook* § 17.5.5. The rules specify that “[w]hen the entire divested resource or equivalent value is returned to the individual, the entire penalty period is nullified.” *See MEH* § 17.5.5.1. The agency interprets this provision to mean that the entire cumulative sum of the divestment must be returned. In this case, that would mean that the value of the irrevocable trust component as well as the promissory note component would have to be returned to justify the recalculation. The petitioner conceded that the trust component has not been cured. But, petitioner maintains that the return of the note component value in its entirety should force the requested recalculation.

I agree with the petitioner. The provision in question does specify that a partial refund of value is not adequate. *See MEH* § 17.5.5.2. But, this does not explicitly cover the facts as in this matter. The example for that MEH provision illustrates that refund of half of the value of a loan would not cure the divestment. But, that is not what happened here. The entire value of the note was refunded in this instant case. The question is whether one component of a divestment can be cured. I believe that the language in MEH 17.5.5.1 quoted above is most instructive on this question. The Handbook's reference to the requirement of the refund of the “entire divested *resource*” (italics added) suggests that different resources may be viewed discretely for purposes of cure. I believe that a reading that would prohibit recalculation when even a small component of the divestment remains would be unreasonably rigid and punitive. I realize that the agency cites *MEH* § 17.6 as support for the contention that the divestment should be seen cumulatively. But, that section seals with counting days of a penalty and not whether there is a valid after-the-fact cure. This decision is in accord with the ALJ's determination in MDV-15739 (August 12, 2014), in which the ALJ ordered reduction of a divestment penalty due to cure of one part of a multiple component divestment.

CONCLUSIONS OF LAW

The petitioner is entitled to a recalculation of the divestment penalty because petitioner purports to have cured part of the total divestment through the refund of the entire value of the promissory note resource.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instruction to recalculate the divestment penalty based on the claimed cure of the divestment of the promissory note resource. This action shall be completed within 10 days.

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, 5005 University Avenue, Suite 201, 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, Madison, Wisconsin 53703, **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 3rd day of June, 2016

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 3, 2016.

Dane County Department of Human Services
Division of Health Care Access and Accountability
Attorney [REDACTED]