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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

c/o Peter E Grosskopf  
1324 W Clairemont Ave #10  
Eau Claire, WI 54701

**DECISION**  
Case #: MDV - 197185

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on December 11, 2019, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the St. Croix County Health & Human Services regarding Medical Assistance (MA), a hearing was held on February 4, 2020, by telephone. A hearing scheduled for January 9, 2020, was rescheduled at the petitioner's request.

The issue for determination is whether the petitioner divested an asset when her husband purchased an annuity that extended beyond his life expectancy.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**

c/o Peter E Grosskopf  
1324 W Clairemont Ave #10  
Eau Claire, WI 54701

**Petitioner's Representative:**

Attorney Peter E. Grosskopf  
Grosskopf Law Office LLC  
1324 West Clairemont Avenue, Suite 10  
Eau Claire, WI 54701

**Respondent:**

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

**By:**

St. Croix County Health & Human Services  
1752 Dorset Lane  
New Richmond, WI 54017-1063

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # ) is a resident of Eau Claire County.
2. The petitioner applied for institutional medical assistance on October 8, 2019, seeking benefits retroactive to September 1, 2019.
3. The petitioner's husband purchased an annuity for \$51,961.96 in July 2015. The annuity pays \$400 per month for 10 years and 10 months.
4. The petitioner's husband was 81 years old when he purchased the annuity. His life expectancy at the time was 7.72 years. [https://www.ssa.gov/OACT/STATS/table4c6\\_2015.html](https://www.ssa.gov/OACT/STATS/table4c6_2015.html)
5. The petitioner's husband was healthy when he purchased the annuity. He did not consult with a lawyer first. He purchased it because it would provide a steady source of income over a period he hoped to live. He did not consider how the annuity would affect his or his wife's eligibility for medical assistance.

### DISCUSSION

A person usually cannot receive institutional medical assistance if her "actually available" assets exceed \$2,000. Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. § 49.47(4)(b)3g.e. But a much larger limit is allowed for an institutionalized married person whose spouse remains in the community. See Wis. Stat., § 49.455. The department initially found that the petitioner was ineligible for benefits because her assets were too high. It now contends that her assets are within the program's limit but that she is ineligible because her husband divested assets when he purchased an annuity whose total income paid out does not exceed the principle and interest of the annuity until past his life expectancy.

A divestment occurs when a person or someone acting on her behalf "transfers assets for less than fair market value" within five years of the later of when she was institutionalized or when she applied for medical assistance. Wis. Stat. § 49.453(2)(a). Using an asset to purchase an annuity is a divestment if the annuity is not actuarially sound; to be actuarially sound it must return the principle and interest within the person's life expectancy. *Medicaid Eligibility Handbook*, §§ 17.11.2.1. and 17.11.2.2. Transferring an asset for less than its fair market value does not affect eligibility if it "was transferred exclusively for some purpose other than to become eligible for MA" Wis. Admin. Code, § DHS 103.065(4)(d)2

The petitioner applied for institutional medical assistance on October 8, 2019. This means that assets transferred since October 8, 2014, are potential divestments. The petitioner's husband purchased an annuity for \$51,961.96 in July 2015. It pays \$400 per month for 10 years and 10 months. When he purchased it he was 81 years old and had a life expectancy of under eight years. He contends it was not a divestment because he did not purchase the annuity for him or his wife to become eligible for medical assistance.

I agree. When he purchased it he wanted a source of income that he could depend on for the next decade. Although this is longer than life-expectancy tables indicated he was likely to live, it was not an unreasonable expectation on his part because he was healthy at the time—and remains so. He did not consult with a lawyer before buying the annuity, and he was unfamiliar with medical assistance rules or life-expectancy tables. It appears that he made a financially responsible decision to ensure he had a source of income even if he outlived the standard lifespan.

Unlike her husband, the petitioner has been in poor health for a long time. This means that in 2015, they may have been aware of her need for medical assistance. The petitioner has the burden of proving by the preponderance of the evidence that the asset used to purchase the annuity was done for some reason other than to become eligible for medical assistance. An administrative law judge is not limited to considering only the testimony; he can also consider circumstantial evidence such as the petitioner's health. But even considering this, I find little support for holding that the petitioner's husband purchased the annuity with

an eye on his wife's medical assistance asset limit. This annuity is not an obviously unsound investment such as where an annuity pays out a small sum every month and then a large sum at the end of one's life expectancy. Given that the annuity made financial sense to the petitioner's husband when he purchased it and there is no evidence that he was aware of the medical assistance program's divestment rules when he did, I find that the petitioner has established by the preponderance of the evidence that the annuity was purchased solely for a reason other than for her or her husband's medical assistance eligibility. Therefore, she is eligible for institutional medical assistance.

**CONCLUSIONS OF LAW**

1. The petitioner's husband did not divest assets when he purchased an actuarially unsound annuity because he did not do so to allow him or his wife to become eligible for institutional medical assistance.
2. The petitioner was eligible for medical assistance as of September 1, 2019.

**CONCLUSIONS OF LAW**

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions that it take the following actions within 10 days of the date of this decision it find the petitioner eligible for institutional medical assistance retroactive to September 1, 2019.:

**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, 5<sup>th</sup> 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 2nd day of March, 2020

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Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals