



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

In the Matter of

(petitioner)
c/o Attorney Michael E. Lambert
P.O. Box 1180
Manitowoc, WI 54221-1180

DECISION

MDV-36/#46674

PRELIMINARY RECITALS

Pursuant to a petition filed November 3, 2000, under Wis. Stat. §49.45(5) to review a decision by the Manitowoc County Dept. of Human Services to deny institutional Medical Assistance (MA), a hearing was held on November 21, 2000, at Manitowoc, Wisconsin.

The issue for determination is whether petitioner divested a life estate according to the terms of the quit claim deed that transferred her home.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)
c/o Attorney Michael E. Lambert
P.O. Box 1180
Manitowoc, WI 54221-1180

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Christopher Shaw, ESS
Manitowoc County Dept. Of Human Services
926 S. 8th Street
P.O. Box 1177
Manitowoc, WI 54221-1177

EXAMINER:

Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Manitowoc County.

2. Petitioner applied for institutional MA on September 1, 2000. By notices dated October 19 and 20, 2000, the county denied institutional MA for August, September, and October, 2000. The denial for August was based on assets being over the MA limit, and petitioner does not contest that denial. The denial for September and October was based upon divestment.
3. On September 30, 1998, petitioner signed a quit claim deed transferring her homestead property to her sons, for no compensation. She reserved a life estate interest, but included the proviso that the life estate would be extinguished if she would be required to move into a nursing home on a permanent basis because of her health. Exhibit 1.
4. On August 29, 2000, petitioner entered a nursing home.
5. The county concluded that when petitioner entered the nursing home, she divested the remaining value of the life estate, resulting in a three-month penalty period beginning August 1, 2000.

DISCUSSION

When an individual, the individual's spouse, or a person acting on behalf of the individual or his spouse, transfers assets at less than fair market value, the individual is ineligible for MA waiver services. Wis. Stat. §49.453(2)(b); Wis. Adm. Code §HFS 103.065(4)(a); MA Handbook, Appendix 14.2.1. Divestment does not impact on eligibility for standard medical services such as physician care, medications, and medical equipment (all of which are known as "MA card services" in the parlance). The penalty period is specified in sec. 49.453(3), Stats., to be the number of months determined by dividing the value of property divested by the average monthly cost of nursing facility services (currently \$3,833).

§HFS 103.06(6), Adm. Code, provides that a life estate can be held without affecting MA eligibility. However, if the life estate is sold, the proceeds are assets. It follows that if a life estate is transferred or extinguished without receiving any proceeds, a divestment has occurred.

The MA Handbook, Appendix 14.10.0, deals specifically with this situation. When a person transfers a homestead without compensation and keeps a life estate, a divestment occurs. In this case, however, even though the 1998 transfer was a divestment, the divestment period passed prior to petitioner's current application. The Handbook states, additionally: "It is also a divestment if the life estate holder transfers the life estate interest for less than fair market value." The example that follows is precisely the situation in this case. When the life estate holder gives the life estate to the remainderman in anticipation of entering a nursing home, a divestment occurs.

I conclude that because petitioner gave up her life estate upon entering the nursing home, the county correctly concluded that a divestment occurred. The county's calculation of the divestment period is not contested. Although petitioner did not take an action at the time of her entry into the nursing home, she drafted the deed so that the action occurred automatically.

Petitioner cites Artac v. Wisconsin DHFS, 2000 WI App 88, 234 Wis. 2d 480, 610 N.W. 2d 115 (Wis. App. 2000), for the proposition that the transfer is not a divestment. In Artac, the MA applicant transferred her homestead into an irrevocable trust prior to the look-back period. The trust document allowed her to remain in the home, and it stated that if she entered a nursing home, the trustee would transfer the home from the trust to a named beneficiary. The Court of Appeals concluded that since the trustee acted on the beneficiary's behalf, not the MA applicant's, it was not a divestment under the §49.453(2), Stats., definition, in that it was not transferred by the applicant or someone acting on her behalf. The Wisconsin Supreme Court denied the department's petition for review in July, 2000 (I erroneously told the parties that the Supreme Court was considering the case).

Nevertheless, Artac is distinguished from this case. The Artac decision centered on the transfer by a trustee. In this case, the life estate is extinguished by petitioner's act. There is no independent trustee taking the action. It was petitioner who affirmatively acted to extinguish the life estate upon her entry into the nursing home.

CONCLUSIONS OF LAW

Petitioner divested a life estate when she gave it up to her remaindermen upon her entry into a nursing home.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found 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 no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The appeal must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of _____, 2001.

Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals
1201/bcs

cc: MANITOWOC COUNTY DHS
DHFS - Susan Wood