



FH



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

In the Matter of

[Redacted]
[Redacted]
[Redacted]
[Redacted]

DECISION

Case #: MDV - 199112

PRELIMINARY RECITALS

Pursuant to a petition filed on June 12, 2020, 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 August 13, 2020, by telephone.

The issue for determination is whether the agency correctly imposed a divestment penalty against the petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Petitioner's Representative:

[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: [Redacted], ESS
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:
Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On or about April 23, 2020 petitioner applied for Institutional MA.
3. In September 2012, petitioner and her husband, as a revocable trust, entered into a property transfer agreement with their daughter ([REDACTED]) whereby they agreed [REDACTED] would purchase their property for \$80,000, for which [REDACTED] would make monthly payments, and for which she would incrementally be transferred interest in that property. The warranty deed for this agreement states, "The conveyance consists of a 5% interest in the Property attached as Exhibit A Legal Description plus a life estate in the property conveyed by the deed for the benefit of the Grantee [REDACTED] for the duration of [REDACTED] and [REDACTED]'s lifetime but not thereafter...After this transfer, ownership of the Property is 95% to [REDACTED] and [REDACTED] Revocable Trust less the Life Estate and 5% plus the Life Estate described above to [REDACTED]." Exhibit 1.
4. On March 28, 2014, the parties signed off on another Warranty Deed for the property. This warranty deed states, "The conveyance consists of a 5% interest in the Property attached as Exhibit A Legal Description plus a life estate in the property conveyed by the deed for the benefit of the Grantee [REDACTED] for the duration of [REDACTED] and [REDACTED]'s lifetime but not thereafter...After this transfer, ownership of the Property is 90% to [REDACTED] and [REDACTED] Revocable Trust less the Life Estate and 10% plus the Life Estate described above to [REDACTED]." Exhibit 2.
5. On March 30, 2015 [REDACTED] signed off on a Quit Claim Deed for the property. The Deed was made between [REDACTED] "her 15% interest" and [REDACTED] Revocable Trust Dated February 10, 2015. Exhibit 3.
6. On May 11, 2018, the parties entered into an Agreement stating that [REDACTED] has purchased a 15% interest in the property and her parents' Trust owned 85% of the property. Exhibit 4. The Agreement also states that [REDACTED] had paid the Trust a total of \$55,200 since October 2012, that based on those payments her ownership interest should be increased to 69%. The parties agreed that:
 1. The Trust will convey to [REDACTED] an additional Fifty-Four (54%) Percent interest in the Real Estate to [REDACTED] in consideration of the \$800 monthly payments paid from January 1, 2016 through May 2018. After this conveyance, the Trust shall have a Thirty-One (31%) Percent interest in the Real Estate, valued at \$24,800.00
 2. [REDACTED] shall continue to pay the Trust \$800 on a monthly basis.
 3. In consideration for each monthly payment made beginning June 2018, the Trust shall convey to [REDACTED] a proportionate [sic] with each \$800.00 monthly payment purchasing a 3.2258% interest in the Real Estate. The Parties agree that the Trust shall execute the necessary deeds necessary to effectuate this conveyance at least annually. [REDACTED] shall have fully purchased one hundred (100%) percent ownership of the Real Estate after making Thirty-One (31) payments to the Trust beginning on June 1, 2018.
7. On May 11, 2018 [REDACTED] filed a Trustee's Deed conveying the property again. This Deed states, "The conveyance consists of a 54% interest in the Property attached as Exhibit A Legal Description plus a life estate in the Property previously conveyed by Grantors in 2012 for the benefit of Grantee [REDACTED] for the duration of [REDACTED] [REDACTED] and [REDACTED] [REDACTED]'s lifetime but not thereafter...After this transfer, ownership of the Property is 31% to [REDACTED] and [REDACTED] Revocable Trust less the Life Estate and 69% plus the Life Estate described above to [REDACTED]." Exhibit 5. A Quit Claim Deed was also filed on the same date quit claiming the 69% interest to [REDACTED]. Exhibit 6.

8. As part of the application process, the agency requested verification of the property sale. Exhibit 10. The agency determined that a divestment occurred in 2018 because the transfer was for less than the fair market value of the property. On June 5, 2020, the agency issued a notice to petitioner advising her that her application was approved, but that she had a divestment penalty of 41 days from April 1, 2020 to May 11, 2020.
9. The agency determined the divestment penalty by first determining the fair market value (FMV) of the property in 2018 per tax records as \$238,100. Exhibit 7. The agency then determined the life estate value of the parents' interest of 85% (per the May 2018 Agreement) and multiplied that by the number from the Life Estate and Remainder Interest table in the Medicaid Handbook (§39.1, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>) that corresponded to the age of the life estate holder at the time the property was transferred, which in this case was 79 years old and the corresponding interest of .45357, for a value of \$91,795.76. The agency then subtracted the \$80,000 purchase prices for a total of \$11,795.76 as the amount divested. The agency then divided that amount by the average daily nursing home cost to a private pay patient for a divestment penalty period of 41 days.

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 coverage of nursing facility services. 42 U.S.C. 1396p(c)(1)(A); Wis. Stat., §49.453(2)(a); Wis. Admin. Code, §DHS 103.065(4)(a); MA Handbook, §17.2.1. 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 the number of days determined by dividing the value of property divested by the average daily nursing home cost to a private pay patient (currently \$286.15). MA Handbook, §17.5.2.

Petitioner argues that the transfer of the property occurred outside of the lookback period because the original purchase agreement was made in 2012, resulting incremental payments were thereafter made in furtherance of that agreement, interest percentages of the transfer were thus made, and therefore cannot be used to determine divestment. Effective January 1, 2014, the look back period is 60 months for all divestments. MA Handbook, §17.3.

The MA Handbook provides the following:

If the property holder transferred the property to the remainder person for less than *FMV*, a divestment has occurred. The *divested amount* is the FMV of the property at the time of the transfer minus the life estate value. To find the life estate value, multiply the FMV of the property by the number from the [Section 39.1 Life Estate and Remainder Interest table](#) that corresponds to the age of the life estate holder at the time the property was transferred.

I do not find authority to support petitioner's argument. This Handbook provision above explains that the transfer for less than FMV is a divestment. The amount is the FMV *at the time of the transfer* minus the life estate value. Per the 2018 agreement, ■■■, "shall have fully purchased one hundred (100%) percent ownership of the Real Estate after making Thirty-One (31) payments to the Trust beginning on June 1, 2018." Under petitioner's argument, I could create an agreement such as the petitioner's with my child today in 2020 and she could pay me a dollar per month thereafter, but if I apply for MA 20 years from now, a full transfer payment (of less than FMV) would not be a divestment in the lookback period. I conclude the transfer occurred in 2018 and the agency was correct to determine the divestment penalty.

CONCLUSIONS OF LAW

The agency correctly imposed a divestment penalty against the petitioner.

THEREFORE, it is ORDERED

The petition for review herein 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, 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.

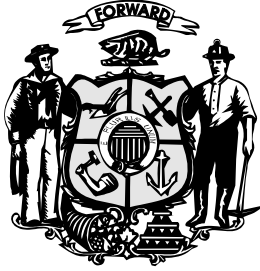
APPEAL TO COURT

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 21st day of September, 2020

\s _____
Kelly Cochrane
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 September 21, 2020.

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

