



FH
[REDACTED]

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

In the Matter of

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

DECISION
Case #: MGE - 201120

PRELIMINARY RECITALS

Pursuant to a petition filed on January 29, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dunn County Department of Human Services regarding Medical Assistance (MA), a hearing was held on March 17, 2021, by telephone. A hearing scheduled for March 2, 2021, was rescheduled at petitioner's request to provide additional time to review agency documents.

The issue for determination is whether a trust established and funded by petitioner is an available asset.

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: [REDACTED]
Dunn County Department of Human Services
808 Main Street
PO Box 470
Menomonie, WI 54751

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Burnett County.
2. In 1984, the petitioner and his late wife created the [REDACTED] and [REDACTED] Family Trust ([REDACTED] Family Trust). The petitioner and his late wife were the grantors (also referred to as donors or settlors). Their children ([REDACTED] [REDACTED] and [REDACTED] [REDACTED]) were the trustees and beneficiaries (also referred to as donees). The trust was funded by the petitioner and his late wife with real property, stocks, certificates of deposit, and savings bonds.
3. The [REDACTED] Family Trust contained the following provisions:

III.

The purpose of this trust is to provide for the general welfare of the Donors, as within the sole discretion of the Trustee such contributions to their support or welfare may be needed. The Donors, however, shall not be considered as any longer having ownership interests in the trust assets, or any vested rights therein. Further, the Trustees shall make no distribution for the trust which would disqualify either Donor from receiving medical assistance or any similar program benefits which they would otherwise receive were it not for the trust. In the event any provision of the trust would be possibly construed as disqualify said Donors from such benefits, the trust shall be constructed as having been intended to conform to such program requirements so as to qualify Donors.

...

The Trustee may distribute, in cash or in kind, such portion of each of the subdivided trusts as, in his sole discretion, is believed to be needed or desirable for the support and welfare of each of the Donors. ...

VI.

This trust may not be amended or terminated by either the Donors or the Donees....

4. In 2004, the [REDACTED] Family Trust was amended. The amendment contained a provision that provided [REDACTED], petitioner's current wife, with rights to certain real property contained in the trust. Provisions of the amendment included the following:
 2. That the original trust contains as part of Article VI that: 'This trust may not be amended or terminated by either the Donors or the Donees.'
 3. That the undersigned Donor, Trustee and Alternate Trustee believe that they can act together, in consort to amend said trust.
5. On November 20, 2020, petitioner applied for institutional MA.
6. By letter dated January 15, 2021, the agency notified petitioner that his MA application was denied due to assets being over program limits. The agency found that the [REDACTED] Family Trust was an available asset for purposes of determining MA eligibility. The agency found the value of the assets in the trust was \$773,564.69.
7. Petitioner argued that the trust was irrevocable and held a current asset value of \$243,190.00, less \$14,000.00 recently paid to a nursing home on petitioner's behalf.
8. On January 29, 2021, petitioner appealed.

DISCUSSION

The issue presented by the parties at the hearing pertained to the agency's treatment of the ██████ Family Trust. The agency determined that the trust was an available asset, which resulted in a finding that petitioner was over the asset limit for MA.

A revocable trust is defined by MA policy to be a trust "... which can be revoked, canceled or modified by the grantor or a court." Medicaid Eligibility Handbook (*MEH*) §16.6.3. An irrevocable trust is defined by policy to be a "... trust that cannot, in any way, be revoked by the grantor." *MEH* §16.6.4.

Section 49.454, Wis. Stats., determines when a trust is counted toward the MA asset limit. It applies in MA matters "if assets of the individual or the individual's spouse were used to form all or part of the corpus of the trust" and the trust was set up by the individual, his spouse, or someone acting on the individual's behalf or request. Wis. Stat. § 49.454(1)(a). All revocable trusts covered by the statute are available; whereas the contents of irrevocable trusts covered by the statute are considered available "[i]f there are circumstances under which payment from an irrevocable trust could be made to or for the benefit of the individual" seeking or receiving medical assistance. Wis. Stat. § 49.454(3)(a).

The ██████ Family Trust indicates its purpose is to provide for the general welfare of petitioner (and his late wife) and the trustee is given discretionary authority to provide that support. The trust seeks to limit the distribution of the trust assets to the petitioner in mainly two ways. First, the distributions are at the sole discretion of the trustee. And second, the trustee is not permitted to provide those distributions if it will disqualify petitioner from MA or similar public assistance programs.

However, MA policy indicates:

If the resources of the individual or the individual's spouse were used to form all or part of the principal of the trust, some or all of the trust principal and income may be considered a non-exempt asset, available to the individual. **If there are any circumstances under which payment from the trust could be made to or for the benefit of the individual at any time no matter how distant, the portion of the principal from which, or the income on the principal from which, payment to the individual could be made shall be considered non-exempt assets, available to the individual.**

This treatment applies regardless of:

- the purpose for which a trust is established;
- whether the trustees have or exercise any discretion under the trust;
- any restrictions on when or whether distributions may be made from the trust; or,
- any restrictions on the use of distributions from the trust.

MEH § 16.6.4.2 (emphasis added), which is based on Wis. Stat. § 49.454(3)(a).

As noted in the foregoing, if there are any circumstances wherein distribution from the ██████ Family Trust can be made to or for the benefit of petitioner, no matter how remote, the trust will be deemed available for MA purposes. In this case, while the trust limits or restricts the circumstances under which distribution may be made to petitioner, there nevertheless remains circumstances when those distributions can be made. In fact, the stated purpose of the trust is to provide for petitioner's welfare. As there are

circumstances under which both the principal and income of the [REDACTED] Family Trust may made to or for the benefit of petitioner, I find it is an available asset for purpose of MA eligibility. As such, I am upholding the agency's determination.

CONCLUSIONS OF LAW

The agency properly found the trust established and funded by petitioner and his late wife to be an available asset for MA eligibility purposes.

THEREFORE, it is ORDERED

That 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.

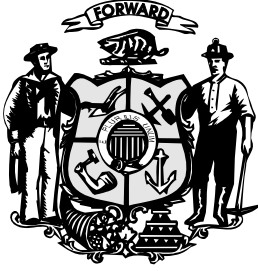
APPEAL TO COURT

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 29th day of April, 2021

\s _____
Jason M. Grace
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 29, 2021.

Dunn County Department of Human Services
Division of Health Care Access and Accountability