



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

In the Matter of



DECISION
Case #: FCP - 177944

PRELIMINARY RECITALS

Pursuant to a petition filed on November 14, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Chippewa County Department of Human Services regarding Medical Assistance (MA), a hearing was held on December 6, 2016, by telephone.

The issue for determination is whether the department correctly determined that the petitioner is ineligible for medical assistance because of a divestment.

There appeared at that time the following persons:


PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: 
Chippewa County Department of Human Services
711 N. Bridge Street
Chippewa Falls, WI 54729-1877

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Chippewa County.
2. The petitioner moved out of her home and into an assisted living facility in March 2016. She began receiving medical assistance around then.
3. The petitioner gave the property she lived in to her children in 2009 but retained a life estate.
4. The petitioner's property was sold for \$97,500 on May 13, 2016. She was 81 years old at the time. Proceeds from the property were divided between her two children. After closing costs, they received a total of \$95,698.47.
5. The department denied the petitioner's medical assistance renewal application on November 1, 2016, and notified her that she would be ineligible from December 1, 2016, until May 7, 2017, a total of 157 days, because she divested the life estate she held in her property.

DISCUSSION

A person 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. She cannot reach this limit by giving away her assets. Doing so is considered a divestment, which occurs if she or someone acting on her behalf "disposes of resources at less than fair market value" within the "look back date." The look back date is five years before the latter of when she was institutionalized and when she applied for medical assistance. Wis. Stat. § 49.453(1)(f); *Medicaid Eligibility Handbook*, § 17.5.3. When someone improperly divests her assets, she is ineligible for the number of days obtained by dividing the amount given away by the statewide average daily cost to a private pay patient in a nursing home when she applied. This is currently \$259.08. Wis. Admin. Code, § DHS 103.065(5)(b). *Medicaid Eligibility Handbook*, § 17.5.2.

There are special rules for determining how a life estate affects eligibility. A life estate is not considered an asset while it is in effect, but the proceeds from the sale of a life estate are. Wis. Admin. Code, § DHS 103.06(6). A person who terminates her life interest in a property without receiving the value of the life estate commits a divestment. *Medicaid Eligibility Handbook*, 17.10.1. The value of a life estate is determined by multiplying the entire value of the property by a fraction that depends upon the person's age when the life estate is divested. *Id.*

The petitioner retained a life estate after transferring ownership of the property she lived in to her children in 2009. That was not a divestment because it occurred more than five years before she sought medical assistance. Her property was sold for \$97,500 on May 13, 2016, and the proceeds were divided between her children. She was 81 years old at the time. The multiplier for her life estate at that age is .41967. *Medicaid Eligibility Handbook*, § 39.1. The department multiplied the \$97,500 sale price by this amount to determine that she divested \$40,917.82. It then divided this by the \$259.08 daily cost of care and determined she was ineligible for 157 days, or from December 1, 2016, through May 7, 2017. This penalty has not gone into effect because she remains eligible while her appeal proceeds.

The petitioner's children contend that they were merely following their lawyer's advice when they retained portion of the sale of the home attributable to the life estate. They point out that since the sale they have spent all of the money. I don't know what their lawyer told them, although I point out that if he told them in 2009 that the life estate didn't count against the medical assistance asset limit, he was right. As was pointed out earlier, it only counts when the property is sold. Regardless, I am bound to follow medical assistance law. That law requires that when the proceeds received for a life estate are given away, a divestment occurs, and the person is ineligible for benefits during the penalty period. There is a hardship waiver to this law, but the petitioner's position is no different than that of anyone else who gives her

assets away without getting anything in return. There is no evidence that denying the waiver will affect her health in any way.

The only quibble I have with the department's decision is that it was based on the home's \$97,500 sale price. While this does establish the property's fair market value, it does not establish what was actually available to pay for medical care because closing costs reduced the net sales price to \$95,698.47. I find that the divestment penalty should be based upon that amount. Multiplying it by .41967 makes the divestment \$40,161.78. Dividing the divestment by the \$259.08 daily cost of care reduces the penalty to 155 days. That penalty may begin on February 1, 2017, the month after this decision takes effect.

CONCLUSIONS OF LAW

1. The petitioner divested a life estate when the property she was living in was sold.
2. The proper length of the petitioner's divestment penalty is 155 days.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it reduce the petitioner's ineligibility for divesting her life estate from 157 to 155 days. That penalty shall begin on February 1, 2017. In all other respects, the 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, 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.

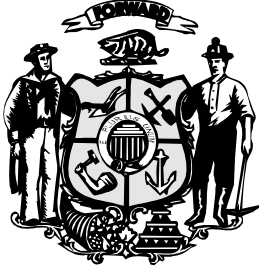
APPEAL TO COURT

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, **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 13th day of December, 2016

\s _____
Michael D. O'Brien
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 December 13, 2016.

Chippewa County Department of Human Services
Office of Family Care Expansion
Health Care Access and Accountability