



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

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MDV - 183502

PRELIMINARY RECITALS

Pursuant to a petition filed on September 13, 2017, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wood County Human Services - WI Rapids regarding Medical Assistance (MA), a hearing was held on October 17, 2017, by telephone.

The issue for determination is whether the agency met its burden to establish that it correctly determined petitioner's share of real estate fees paid to a realtor as a divestment justifying a 6-day penalty period.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

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

Respondent:

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

By: S. White

Wood County Human Services - WI Rapids
220 Third Avenue South
Suite 4
Wisconsin Rapids, WI 54495

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Florence County.
2. Petitioner was on LTC-MA. She owned a life estate in her residential home.
3. Petitioner decided to list her home for sale and entered into a listing contract with a realtor on 1/30/17 which provided for a 6% fee to the realtor.
4. A 6% fee to a realtor is fair market value and a standard term of such a contract.
5. The home was sold and petitioner paid a prorated share of the realtor fee based on her limited life estate interest in the property. The fee calculated was the appropriate proportion.
6. The agency determined that the fee paid by petitioner was a divestment of \$1,831.19.
7. Petitioner appealed.

DISCUSSION

A person cannot receive institutional medical assistance if her assets exceed \$2,000. See Wis. Stat. §§ 49.46(1) and 49.47(4). Generally, a person cannot reach this limit by divesting assets, which occurs if she or someone acting on her behalf “disposes of resources at less than fair market value” within five years or later of when she was institutionalized and applied for medical assistance. Wis. Admin. Code, § DHS 103.065(4)(a); Wis. Stat. § 49.453(1)(f).

If the person improperly divests her assets, she is ineligible for institutional medical assistance for the number of months obtained by dividing the amount given away by the statewide average monthly cost to a private-pay patient in a nursing home at the time she applied. Wis. Adm. Code, § DHS 103.065(5)(b).

The facts are not in dispute. Within the look-back period, petitioner sold her life-state interest in real property. Petitioner paid the proportional share of the 6 percent real estate fees paid to the realtor who listed the property and handled the sale. The agency determined that the payment of the fees was a divestment. I have never heard of such a determination and the agency representative was unable to direct me to any law or rule that supports such a finding. There is no evidence that the sum paid to the realtor exceeded the fair market value of the services the realtor provided. There is simply no merit to the agency’s determination based on the record in this matter.

CONCLUSIONS OF LAW

The agency erred in its determination of a divestment based on fees paid to a realtor in the sale of petitioner’s property.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instruction to reverse the determination of the divestment of \$1,831.19 paid in realtor fees, as well as the related divestment penalty. This action must be completed within 10 days of this decision.

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.

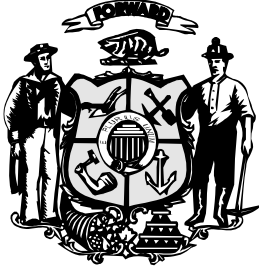
APPEAL TO COURT

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 6th day of December, 2017

\s _____
John P. Tedesco
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 6, 2017.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability

