



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

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In the Matter of

DECISION

MDV-49/44514

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 3, 2000, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Portage County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on June 19, 2000, at Stevens Point, Wisconsin. A hearing previously set for May 25, 2000 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner's son's mobile home located on farm property is considered to be part of petitioner's "home" for divestment purposes pursuant to MA Handbook Appendix 14.4.0.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Represented by:

Attorney Torren K. Pies  
127 Main Street  
P.O. Box 228  
Stevens Point, WI 54481-0228

Respondent:

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: Pam Flatoff, ESS  
Portage County Dept Of Human Services  
817 Whiting Avenue  
Stevens Point, WI 54481-5292

**EXAMINER:**

Kenneth P Adler  
Administrative Law Judge  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (SSN, CARES #) is a resident of Portage County. Petitioner's spouse died on October 20, 1999.
2. On November 8, 1999 petitioner divested farm homestead property with a fair market value of \$227,533 to his son who was also his POA.
3. The property is a working farm and consists of a house, outbuildings and 131 acres. Petitioner's son and POA resides in a mobile home located approximately 100 feet from the home in which his father and mother resided.
4. In January, 2000 petitioner entered a nursing home.
5. On March 7, 2000 petitioner's son and POA filed an application for nursing home MA on petitioner's behalf.
6. On April 7, 2000 the county agency issued a notice of decision stating petitioner's MA application was denied for the period 11/1/99 – 10/31/02 due to divestment. Petitioner remained eligible for MA card services. Exhibit 2
7. The county agency does not dispute petitioner's son and POA provided care and support to his parents for at least two years, allowing them to remain in their home without the need for institutionalization or community waivers assistance.
8. Petitioner's son and POA did not physically reside within petitioner's home. Petitioner's son and his wife lived in a mobile home which was moved to petitioner's property in 1988.
9. Although on the same property as the permanent home, petitioner did not own the mobile home in which his son resides. Petitioner's son has always paid a separate personal property tax on the trailer separate from any property taxes paid on petitioner's home.

### DISCUSSION

The issue in this particular case is whether the divestment committed by the petitioner meets any of the exceptions to the MA eligibility rules stating divestment is a bar to eligibility. While there is no dispute the petitioner's son and POA provided care and support for his parents, the question is whether the petitioner's son meets the exception that he *resided in* the petitioner's *home* while providing that care.

A divestment is a transfer of assets for less than fair market value. Wis. Stat. §49.453(2)(a); MA Handbook, Appendix 14.2.1. A divestment or divestments made within 36 months (60 months if the divestment is to an irrevocable trust) before an application for nursing home MA may cause ineligibility for that type of MA. Wis. Stat. §49.453(1)(f); Handbook, App. 14.3.0.

The ineligibility for MA due to divestment is only for nursing home care; divestment does not impact on eligibility for other medical services such as medical care, medications, and medical equipment (all of which are known as "MA card services."). The penalty period is specified in Wis. Stat. §49.453(3), 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).

Divestment is not a barrier to eligibility if the institutionalized person divests homestead property to his adult child and the following two conditions are met: (1) the child has been *residing in the person's home* for at least two years immediately before the person became institutionalized; *and* (2) the adult child provided care to the individual which allowed him to reside at home rather than an institution, or which permitted him to avoid becoming a community waivers participant. MA Handbook, Appendix 14.4.0.

The county agency and the petitioner's representative agree that the petitioner divested property worth \$227,533. In addition, although the county agency initially asserted a portion of the property which was divested was not contiguous to the homesite, at hearing the agency explained it had decided the property *is* in fact contiguous. Therefore, the entire parcel of property described in Finding of Fact #3 is under review as a divestment.

The county agency does not dispute the petitioner's son met the second condition above by providing care and support to his parents for at least two years. However, the county agency does not believe the petitioner's son *resided in the petitioner's home* as required by the first condition as the petitioner does not own the mobile home in which his son resides. Although the mobile home is on the same lot as the petitioner's permanent home, the county agency views the mobile and permanent home as two separate residences because the permanent home is taxed separately from the personal property tax for the mobile home.

The petitioner's representative asserts the two dwellings are in such close proximity they should be considered the same "home." Based upon the short distance between the two houses, the petitioner's son was able to care for his parents as if he actually resided in their home. And, it was this care that allowed them to remain in their home and prevented institutionalization and requests for public assistance at an earlier date.

The MA Handbook, Appendix 11.7.0 states that in urban situations a home usually consists of a house and a lot. Multiunit dwellings can also be considered as one "home" if the MA applicant lives in one of the units and the caretaker child lives in another unit if the applicant owns the remainder of the units in the building. MA Handbook, Appendix 11.7.1.

In farm situations, the MA Handbook, Appendix 11.7.0 states that a "home" consists of the house *and* buildings *together with* the total acreage property upon which they are located and which are considered part of the farm. Even land on the other side of a road is to be considered part of the "home" in a farm situation.

I find this to be a difficult case. It is undisputed the petitioner's son provided care to his parents which allowed them to remain in their home. Although he initially moved to the farm in 1988 to assist his father with the business, he eventually became the primary caretaker for his parents.

However, the petitioner's son clearly did not reside in his parent's home. First, the petitioner's son did not reside in the same physical building. The mobile home was a separate structure on the farm property not connected to the permanent home in any way.

Second, the mobile home was not considered part of the farm property, as evidenced by the fact it was separately taxed as "personal property." Although a farm consists of the house and buildings, this refers to farm buildings located on the property and taxed with the property. In this case the mobile home cannot be considered a farm building and is not taxed with the farm.

Based upon the above, I am persuaded the petitioner's child did not reside in the petitioner's "home" in a fashion that meets the exception to the divestment policy. I do not dispute that the mobile home was in such close proximity to the petitioner's home that it allowed his son to take care of his parents. However, the relevant policy requires *both*: (1) providing care which allows the individual to remain in his home; and (2) the child providing care must reside in the same home.

To do otherwise becomes a test of "in home." If not physically attached or within the same building, what distance becomes appropriate? 50 feet, 100 feet, 200 feet? Administrative law judges are not allowed to issue equitable decisions. I cannot avoid the clearly stated rules and policy. Therefore, I must

conclude the petitioner's son did not "reside in" the petitioner's home while living in a mobile home located on the same farm but not physically attached to the permanent home and taxed separately from the property.

### **CONCLUSIONS OF LAW**

1. That petitioner's son who resided in a mobile home approximately 100 feet from the petitioner's home on a farm property was not residing in petitioner's "home" for the purposes of MA Handbook, 14.4.0.
2. That the divestment of farm property from petitioner to his son who resided on the farm property but did not reside in the same home as petitioner results in a divestment penalty period as it does not meet the divestment exception at MA Handbook, Appendix 14.4.0.

**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).

Appeals for benefits concerning Medical Assistance (MA) 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 \_\_\_\_\_, 2000.

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Kenneth P Adler  
Administrative Law Judge  
Division of Hearings and Appeals  
97/KPA

cc: PORTAGE COUNTY DEPT OF HUMAN SERVICES  
DHFS - Susan Wood  
Torren K. Pies-Anderson, Shannon, O'Brien, Rice & Bertz