



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

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In the Matter of

(petitioner)

DECISION

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MDV-55/83139

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 22, 2007, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the St. Croix County Dept. of Human Services in regard to medical assistance, a hearing was held on April 19, 2007, at New Richmond, Wisconsin.

The issue for determination is whether the petitioner is ineligible for medical assistance because of a divestment and excess assets.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

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: Diane Peterson, ESS  
St. Croix County Dept Of Human Services  
1445 N. Fourth Street  
New Richmond, WI 54017-1063

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES #xxxxxxxxxx) resides in St. Croix County.
2. The petitioner received a \$219,088.66 settlement from a lawsuit in January 2007.

3. The petitioner gave approximately \$13,000 of her settlement to her son. She gave a similar amount to her husband's sister and brother-in-law. The total amount she gave away was \$25,876.28.
4. After receiving her settlement, the petitioner purchased land for \$87,000. She does not live on this land.
5. The county agency seeks to end the petitioner's medical assistance because of divestments and because her assets exceed the program's limit.

### **DISCUSSION**

Medical assistance applicants must meet the program's asset limit. To prevent those with enough funds to pay for their own medical care from becoming a burden to the general public by passing their assets to potential heirs, MA law prevents a recipient from reaching this limit by divesting assets. A divestment occurs when an applicant, or a person acting on the applicant's behalf, transfers assets for less than their fair market value on or after the lookback date. Wis. Stat. § 49.453(2)(a). The lookback date is generally 36 months, but is 60 months if a trust is involved, which it is not here. Wis. Stat. § 49.453(1)(f). The lookback date for an institutionalized person begins on the first day that the person is both institutionalized and applies for medical assistance. Wis. Stat. § 49.453(1)(f)1. A person eligible for MA under one of the MA Waiver programs is considered institutionalized. Wis. Stat. § 49.453(2)(a)3. Divesting assets renders recipients ineligible for MA for the number of months obtained by dividing the amount of disposed assets over the asset limit by the statewide average monthly cost to a private pay patient in a nursing home, or \$5,584. Wis. Adm. Code § HFS 103.065(5)(b); Wis. Stat. § 49.453(3); *see also Medicaid Eligibility Handbook*, § 4.7.5. The period of ineligibility begins on the date of the divestment. *Id.*

The petitioner received over \$219,000 from a lawsuit in January 2007. She gave approximately \$13,000 each to her son and sister-in-law. The county agency determined that both were divestments and found her ineligible for MA for four months. The money given to her son was to keep him from losing his house in foreclosure after paying for his own son's medical care; the amount to her sister-in-law was reportedly to repay money borrowed from her. While it is understandable, and commendable, for the petitioner to help her son, it is still a divestment because she gave him the money without receiving anything of value in return. The payment to the sister-in-law is also a divestment because there is no proof such as contemporaneous records to show what the petitioner owed her sister-in-law. Therefore, I must uphold the agency's decision to find the petitioner ineligible for MA for four months.

The agency also determined land on which the petitioner eventually plans to build a house is a countable asset when determining whether she is eligible for MA. The petitioner used \$87,000 of her settlement to buy the land. She believes this should not count as an asset because it is homestead property. Homestead property is an exempt asset, but this is not homestead property because she does not currently live on it. Wis. Adm. Code § HFS 103.06(4). Non-homestead property is a countable asset unless it produces a reasonable amount of income or is listed for sale. Wis. Adm. Code § HFS 103.06(5). Because neither condition applies here, the county agency must include this property when determining whether her assets exceed the MA limit after her divestment penalty period ends.

### **CONCLUSIONS OF LAW**

1. The petitioner divested \$25,876.28 when she gave money to her son and sister-in-law.
2. The county agency correctly determined that the petitioner was ineligible for MA for four months after she divested \$25,876.28.
3. The land purchased by the petitioner for \$87,000 after she settled her lawsuit is a countable asset.

**NOW, THEREFORE, it is**

**ORDERED**

That the petition herein be and the same hereby is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge 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.

To ask for a rehearing, 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 for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wisconsin Statutes § 227.49. A copy of the statutes can be 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 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to Circuit Court, the Respondent in this matter is the Wisconsin Department of Health and Family Services. Appeals must be served on the Office of the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 650, P.O. Box 7850, Madison, WI 53707-7850.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wisconsin Statutes §§ 227.52 and 227.53.

Given under my hand at the City of Eau  
Claire, Wisconsin, this 9th day of May,  
2007

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/s/Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals  
725/MDO