



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MDV/138459

PRELIMINARY RECITALS

Pursuant to a petition filed January 24, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Marinette County Department of Human Services in regard to Medical Assistance, a hearing was held on March 02, 2012, at Marinette, Wisconsin.

The issue for determination is whether the county agency correctly denied the petitioner's Institutional MA application for the period of October 27, 2011 to January 8, 2012 due divestment resulting from petitioner's gifting to relatives.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Representative:

[REDACTED]

Respondent:

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

By: Mimi Guseck, ESS

Marinette County Department of Human Services
Wisconsin Job Center Suite B
1605 University Drive
Marinette, WI 54143

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marinette County who was admitted to the Luther Nursing Home of October 27, 2011. The petitioner's husband, [REDACTED] passed away on January 22, 2010.
2. The petitioner had resided in a Michigan nursing home prior to October, 2010. As of October 29, 2010, petitioner moved in with [REDACTED] and her husband who provided room, board and care for petitioner for \$1,000 per month.
3. On November 15, 2011, petitioner's power of attorney (POA), [REDACTED], applied at the county agency for Institutional MA-LTC on petitioner's behalf.
4. Petitioner's representative provided to the county agency petitioner's financial records from her account at Menominee Federal Credit Union back to August, 2009. Those records indicated the following: a) from August, 2009 to November, 2011, the account activity indicated withdrawals of \$29,134.50; b) the petitioner paid \$1,000 per month to [REDACTED] for 13 months that petitioner was living and being cared for by [REDACTED] (\$13,000); c) the POA provided to the county agency medical bills of \$149.66; d) petitioner's POA did not provide any other documentation or receipts regarding the withdrawals of funds from petitioner's Federal Credit Union account; e) the petitioners' POA admitted that petitioner made monetary gifts to her daughter and grandchildren from her Federal Credit Union account with no monetary value received in return.
5. The county agency sent a January 4, 2012 notice to the petitioner and her POA stating that petitioner's Institutional MA application was denied for the period of October 27, 2011 to January 8, 2012, due to \$15,984.84 in divestments of assets resulting from petitioner's gifting to her relatives.
6. The county agency imposed the divestment penalty period that made petitioner ineligible for MA for that period based upon the following calculation: \$15,984.84 divided by \$215.46 (average daily nursing home rate) equals 74 days of ineligibility. The 74 day divestment period is from October 27, 2011 through January 8, 2012 during which petitioner was eligible for MA card services only (doctor or hospital visits).
7. The county agency sent a January 4, 2012 notice to the petitioner that petitioner was eligible for Institutional MA benefits as of January 9, 2012 with a nursing home liability.

DISCUSSION

A divestment occurs when an institutionalized individual, his spouse, or another person acting on his behalf, transfers assets for less than fair market value, on or after the individual's "look-back date." Wis. Stat. § 49.453(2)(a). "Fair market value" is an estimate of the prevailing price an asset would have had if it had been sold on the open market at the time it was transferred. Medicaid Eligibility Handbook (MEH) § 17.2.1. The "look-back date" is defined as 36 months before, or with respect to trusts, 60 months before, the first date the individual is both institutionalized and an MA applicant. MEH § 17.3.

If such a transfer occurs, the individual is ineligible for MA for nursing home services for a number of months determined by totaling the value of all assets transferred during the look-back period and dividing that amount by the average monthly cost to a private patient of nursing facility services at the time of the MA application. MEH § 17.5. The ineligibility period begins with the month of the first divesting transfer of assets.

A parallel divestment definition is found at Wis. Admin. Code § HFS 103.065(4), and states in the parts relevant here, as follows:

(4) DIVESTMENT. (a) *Divestment resulting in ineligibility.* An institutionalized individual or someone acting on behalf of that individual who disposes of resources at less than fair market value within 30 months . . . immediately before or at any time after the date the individual applies for MA while institutionalized, shall be determined to have divested. . . (Emphasis added).

During the March 2, 2012 hearing, the county representative established with reliable testimony and evidence that the petitioner gave monetary gifts to her daughter and grandchildren during the 36 look back period in the amount of \$15,984.84. The petitioner's POA did not dispute those gifts and admitted that petitioner did not receive any monetary value in return for those gifts (transferring assets for less than fair market value is divestment). As a result, those gifts were clearly divestments, as explained above. The petitioner's POA admitted that she did not have any receipts or documents to refute the county agency calculation that \$15,984.84 of the \$29,134.50 in withdrawals were gifts by petitioner to her family. Accordingly, based upon the above, I conclude that the county agency correctly denied the petitioner's Institutional MA application for the period of October 27, 2011 to January 8, 2012 due divestment resulting from petitioner's gifting to relatives.

CONCLUSIONS OF LAW

The county agency correctly denied the petitioner's Institutional MA application for the period of October 27, 2011 to January 8, 2012 due divestment resulting from petitioner's gifting to relatives.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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 Wis. Stat. § 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 with the appropriate court 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 Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

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 Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 24th day of April, 2012

/sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals

c: [REDACTED]