



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MDV-28/100729

PRELIMINARY RECITALS

Pursuant to a petition filed December 19, 2008, under Wis. Stat. § 49.45(5) and Wis. Admin. Code §HA 3.03(1), to review a decision by the Jefferson County Dept. of Human Services in regards to the denial of Medical Assistance (MA), a hearing was held on January 14, 2009, at Jefferson, Wisconsin. At the request of the parties, the record was held open for a total of 30 days; 15 for each to submit a written argument post-hearing.

The issue for determination is whether the county agency correctly determined that the petitioner had divested \$171,052.25 to her son and daughter-in-law by realty transactions.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Represented by:

Edmond J. Vaklyes Jr., Attorney
Congdon, Walden, Schuster & Vaklyes, S.C.
707 West Moreland Boulevard, Suite 9
P O Box 377
Waukesha, WI 53187

Respondent:

Wisconsin Department of Health Services
1 West Wilson Street, Room 651
P.O. Box 7850
Madison, WI 53707-7850

By: Mary Springer, ESS
Jefferson County Dept Of Human Services
Workforce Development Center
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Jefferson County. She entered a nursing home on September 5, 2008. She subsequently applied for Institutional – Medical Assistance on October 2, 2008.

2. During processing of the application, the county agency learned that on July 25, 2008, the petitioner, and her community spouse, husband [REDACTED] transferred a 34% interest in their residence realty to their son, [REDACTED] and his wife [REDACTED], by quitclaim deed. This deed was recorded on July 29, 2008. At that time, the home was assessed for property tax purposes with a value of \$204,300.
3. 34% of \$204,300 is \$69,462.
4. At the time of the quitclaim transfer of July 25, 2008, the petitioner and her husband owed a mortgage balance on the homestead realty of \$68,314.
5. Also on July 25, 2008, the petitioner, her husband, [REDACTED] and [REDACTED] all took out a mortgage together for \$175,000, secured by the same residence realty originally wholly owned by the older couple. The loan proceeds, after deduction for closing costs of \$5,094.78, were then used to pay off the existing mortgage balance of \$68,314.97; plus \$41,000 was used to pay off [REDACTED] and [REDACTED] personal pre-existing debts; and \$61,161 was used to fund home improvements to the parent couple's home to enable the junior couple and their children to live together with [REDACTED] in the same residence.
6. On November 6, 2008, the county agency issued a letter Notice to the petitioner informing her that the county agency determined that the petitioner and her spouse had divested \$69,462 to [REDACTED] & [REDACTED] (the quit claim of 34% interest in realty) and had divested \$101,590.25 to the younger couple (the net loan proceeds of the \$175,000 refinancing after costs and prior 1st mortgage payoff), and that as a result, she would be ineligible for Institutional MA until September 30, 2010.
7. On November 20, 2008, [REDACTED] & [REDACTED] (the child couple) executed a quit claim to [REDACTED] & [REDACTED] transferring all interests in the apparently then remodeled residence realty back to the parent couple.
8. On December 16, 2008, the holder of the \$175,000 Mortgage Note executed an Amendment to Note Dated July 25, 2008, completely releasing the petitioner and her husband from any liability to repay the original mortgage note, and hold only [REDACTED] and [REDACTED] liable for repayment, retroactive to July 25, 2008.
9. On December 19, 2008, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the agency denial of Institutional - MA and the correctness of the divestment penalty period imposed.

DISCUSSION

A person seeking Medical Assistance is ineligible if her assets exceed \$2,000. Wis. Stat. § 49.47(4)(b)3g. In order 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 person acting on the applicant's behalf, transfers assets for less than their fair market value during the lookback period. The lookback period is generally 36 months. Wis. Stat. § 49.453(1)(f). Divesting assets renders recipients ineligible for MA for the number of months obtained by dividing the amount of disposed assets by the statewide average monthly cost to a private pay patient in a nursing home. Wis. Ad. Min. Code § HFS 103.065(5)(b); Wis. Stat. § 49.453(3); see also, *Medicaid Eligibility Handbook* § 17.5. This amount was then \$6,259 per month. *Medicaid Eligibility Handbook*, § 17.5 (Release 08-03, effective July 1, 2008). The county agency determined that the petitioner was ineligible for Medical Assistance for 27 months, beginning with June, 2008, because she divested a total of \$171,052.25 in assets in July, 2008.

After the hearing, the agency came up with a new divestment theory in its written argument. It conceded that the divestment event was actually only \$41,000, i.e., the loan proceeds that were applied to the junior

couple's pre-existing debts. This interpretation would make the petitioner ineligible for 6 months, July – December, 2008. See, County Agency Argument, dated February 4, 2009. Wis. Admin. Code § HFS 103.065(5)(b); Wis. Stat. § 49.453(3); *see also*, *Medicaid Eligibility Handbook* § 17.5.

The petitioner and her spouse (the “parent couple”) now owns full undivided joint (survivorship marital property) title to the entire homestead realty, with the \$61,000 in improvements. The formerly quit-claimed 34% has been returned to the title of the petitioner and her spouse. There was a divestment of realty, but that has been cured by return of title. The junior couple now is obligated to pay the entire \$175,000 mortgage on the realty owned by the parent couple. Thus, the junior couple “owns” the \$41,000 of the loan proceeds paid on their pre-existing debts, by virtue of the execution of the December 16, 2008, Amendment to Note. [REDACTED] and [REDACTED] obligation to pay these pre-existing debts has thus been returned to them by, in net effect, folding the \$41,000 payoff of these debts into the \$175,000 Mortgage Note, by the Amendment. The junior couple took on the debt arising from all of the payouts, \$41,000 for their own debts, \$61,000 for improvements to the parent couple's home, \$5,000 in closing costs, and \$69,000 in payoff of the parent couple's first mortgage. The release of the \$41,000 to the junior couple was a divestment between the closing date and the Amendment date, but it too has been cured.

I have no doubt that the two couples will arrange for some transfer in the future of the realty title. Some such transfers may be permissible, non-divestment transactions. Others are not. But in the present tense, the divestment events in this case have been cured, and no penalty period is applicable. The matter must be remanded to the county agency with instructions to review and re-determine the petitioner's eligibility for Institutional MA as if all divestment events have been cured, and without imposition of a penalty period.

CONCLUSIONS OF LAW

- 1) That the petitioner and her spouse divested 34% interest in their homestead to [REDACTED] and [REDACTED] on July 25, 2008, but this divestment was cured on November 20, 2008 by a quit claim deed returning this percentage to the petitioner and her husband's ownership.
- 2) That the petitioner and her spouse divested mortgage loan proceeds of \$41,000 to [REDACTED] and [REDACTED] on or about July 25, 2008, but this divestment was cured on December 16, 2008, when [REDACTED] and [REDACTED] became solely obligated to repay the \$175,000 Mortgage Note, by Amendment to that Note.

NOW, THEREFORE, it is

ORDERED

That the matter is remanded to the county agency with instructions to: rescind the November 6, 2008, denial of the petitioner's application for MA and a penalty period of 27 months; review and re-determine the petitioner's eligibility for MA retroactive to the first month of eligibility requested under the petitioner's application of October 2, 2008, as if no divestment had occurred; certify her as eligible for all MA to which she was otherwise eligible; with written notice. These actions shall be completed within 10 days of the date of this Decision.

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 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
Madison, Wisconsin, this 9th day of
March, 2009

/s/Kenneth D. Duren
Administrative Law Judge
Division of Hearings and Appeals

519/KDD

cc:

