



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MDV-38/56284

PRELIMINARY RECITALS

Pursuant to a petition filed January 7, 2003, under Wis. Stats. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Marinette County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on March 31, 2003, via phone. The record was held open for a week to see if the Petitioner's representative was going to submit a written argument on the divestment issue. Ultimately the argument seemed simple enough that none was considered necessary. The matter was rescheduled one time.

The issues for determination are whether the county agency correctly determined that a divestment occurred and whether the community spouse income allocation of the Petitioner's community spouse can be increased.

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: Anne Schuhart, Economic Support Staff
Marinette County Dept Of Human Serv
Wisconsin Job Center Suite B
1605 University Drive
Marinette, WI 54143

Administrative Law Judge:

David D. Fleming

Division of Hearings and Appeals

FINDINGS OF FACT

1. The Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of a nursing home in Marinette County.
2. The Petitioner's spouse lives in the community.

3. An application for institutional MA was filed with the county agency on behalf of the Petitioner seeking MA coverage effective October 2, 2002 forward. The application was denied for the period of October 2 through October 31, 2002 due to a divestment.
4. The Petitioner was the owner of real property located in Muskego in Waukesha County. It was sold on or about August 2, 2002 for \$ 203,000. The property had been on the market for about a year prior to the sale and was finally sold to individuals who had been living in the property as tenants. The purchasers were unable to provide a down payment so the Petitioner and his spouse lent them the down payment by letting them sign a promissory note on July 31, 2002 in which the purchasers agreed to pay the community spouse, JC, \$ 20,300 over a period of 5 years. The note was secured by a second mortgage naming the Petitioner and his spouse as the mortgagees. There was no interest on the note because the purchasers would not have been able to obtain bank financing for the rest of the purchase price because of their own financial circumstances. The purchasers are not related to the Petitioner nor to his spouse.
5. At the time of the Petitioner's MA application the Petitioner's income was \$ 2918.00 per month and his spouse had income in the amount of \$ 911.00. A portion of the Petitioner's income, \$ 1330.00 was allocated to the Petitioner's community spouse to bring her income to the maximum community spouse income allowance where there are excess shelter expenses. (The shelter costs are in excess of \$ 580 per month.)
6. The budget submitted by the Petitioner's wife shows the following monthly expenses for herself:

Auto Insurance	\$34.75
Auto Maintenance	\$25.00
Cable at home	\$39.00
Church Contributions	\$80.00
Clothing	50.00
Clothing Maintenance	\$15.00
Dentist bills	\$30.00
Doctor and Medication	\$100.00
Electric bill	\$60.00
Entertainment	\$150.00
Eye Glasses & Exam	\$15.00
Gasoline	\$65.00
Grocery bill	\$300.00
Heating bill	\$61.00
Home Maintenance	\$100.00
Homeowner's Insurance	\$43.00
Mortgage	\$1,305.00
Pet Care & Food (2 dogs)	\$40.00
Personal Needs	\$150.00
Phone bill	\$30.00
Sewer bill	\$23.33
Taxes Federal	\$232.00
Taxes Real Estate	\$294.00
Telephone Long Dist.	\$35.00
 Total Expenses	 \$3,277.74

DISCUSSION

I. Divestment

A single person cannot be eligible for institutional/nursing home MA if s/he has nonexempt assets exceeding \$2,000. To prevent a person from simply giving away his or her assets when the specter of nursing home costs appears, the MA program has developed policies to limit eligibility in the event of such giveaways, or prohibited "divestments."

A divestment is a transfer of assets for less than fair market value. *§ 49.453(2)(a), Wis. Stats.; 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 institutional MA may cause ineligibility for that type of MA. *§ 49.453(1)(f), Stats.; MA Handbook, App. 14.3.0.* The ineligibility 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" in the parlance). The penalty period is specified in *§ 49.453(3), Stats.*, to be the number of months determined by dividing the value of property divested by the average monthly cost of nursing facility services. *MA Handbook, Appendix 14.5.0.* A divestment is exempt if the individual intended to dispose of the resource either at fair market value or for other valuable consideration or the resource was transferred exclusively for some purpose other than to become eligible for MA. *HFS § 108.065(4)(d), Wis. Adm. Code.* In this case, the agency calculated a disqualification period of 1 month because the transaction occurred in July 2002 but MA eligibility was not requested for the period prior to October 2, 2002.

The county agency concluded that the signing of the promissory note constituted a divestment and relies on the following language of the MA Handbook in support of that proposition:

It is a divestment *if an institutionalized person signs a promissory note* that has one of the following:

- ...
 - A balloon payment
 - ...
 - An inadequate interest rate (relative to current market rates) at the time the promissory note was signed.

MA Handbook, Appendix 14.12.0. (Emphasis added).

I do not agree with the county agency conclusion. The promissory note is signed by the borrowers in this case. It was not signed by the Petitioner nor his spouse. There is no other basis for the alleged divestment.

II. Spousal Impoverishment

The current community spouse income allowance (CSIA) is the *lesser* of \$ 2,232 per month, or \$ 1,875.00 plus the amount of shelter expenses incurred each month by the community spouse which exceed \$ 580.00, known as the "excess shelter allowance". *Wis. Stats. § 49.455(4)(b), MA Handbook, App. 23.0.0.* The CSIA is considered to be the amount of monthly income the spouse of an individualized individual requires to continue residing in the community and meeting his or her basic maintenance needs.

The Division of Hearings and Appeals has the authority to increase the CSIA above the minimum where it is insufficient to meet a particular community spouse's basic maintenance needs. *Wis. Stats. § 49.455(8)(c); Wis. Adm. Code § HFS 103.075(8)(c); MA Handbook, Appendix 23.6.0.4.* This increase can occur only if it is established that the community spouse requires income above the level provided by the minimum due to the existence of "exceptional circumstances resulting in financial duress" for the community spouse. *Wis. Stats. § 49.455(8)(c); Wis. Adm. Code § HFS 103.075(8)(c).*

The term "exceptional circumstances resulting in financial duress" is defined as situations which result in the community spouse being unable to provide for his or her own necessary and basic maintenance needs. *Wis. Adm. Code §HFS 103.075(8)(c), Wis. Adm. Code; see also, MA Handbook, Appendix 23.6.0.A3 (last paragraph).*

In this case the expenses of the Petitioner's community spouse are noted in Finding # 6. She seeks an increase in the CSIA in the amount of \$ 1045.74. In reviewing her total budget there are at least \$ 794.00 of expenses that are questionable: cable - \$ 39.00, church contributions - \$ 80.00, entertainment - \$150.00, groceries for one person (questionable as to the amount) - \$ 300.00, pet care - \$ 40.00, personal needs - \$ 150.00 and long distance phone charges of \$ 35.00. Certainly it is reasonable to approve a certain amount for groceries, entertainment, personal needs and necessary long distance calls but here the Petitioner's spouse seeks \$ 339.00 for entertainment, personal needs and cable alone. I am increasing the Petitioner's CSIA but not by the amount requested by the Petitioner's spouse. There is no way to be perfectly precise in determining how much is appropriate. I am, however, limiting the increase in the CSIA to \$ 400.00; in effect granting the \$ 300.00 per month grocery bill as well as an additional \$ 100.00 to be used as the Petitioner's spouse deems appropriate for the other expenses.

CONCLUSIONS OF LAW

1. That the Petitioner did not divest thus must be certified for MA effective October 2, 2002.
2. That the Petitioner's community spouse has expenses for basic maintenance needs in excess of CSIA.

NOW, THEREFORE, it is

ORDERED

That the matter be remanded to the county agency with instructions to take the administrative steps necessary to certify the Petitioner for institutional MA effective October 2, 2002 and to increase the CSIA by \$ 400.00. If the county agency takes any negative action it must issue a Notice of Decision stating the reason for its negative action. The county agency must take these steps within 10 days of the date of this decision.

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 § 227.49 of the state statutes. 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 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 § 227.53 of the statutes.

Given under my hand at the City of Milwaukee, Wisconsin, this 6th day of May, 2003

/sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals
4-30/DDF