



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDV/152549

PRELIMINARY RECITALS

Pursuant to a petition filed October 01, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on November 19, 2013, at Eau Claire, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Sheila Morden

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.

2. On September 18, 2013, the county agency notified the petitioner that she would be ineligible for medical assistance from July 1, 2013, through November 25, 2013. A separate notice issued that day informed her that her current medical assistance benefits ended as of August 31, 2013.
3. The petitioner sold her house on June 22, 2013, receiving \$113,304 after deducting selling expenses.
4. On June 13, 2013, the petitioner entered into separate agreements with her daughter and son-in-law to pay \$25 per hour for nutrition and cleaning services. This agreement was not notarized.
5. From June 22, 2013 to August 19, 2013, the petitioner made payments totaling \$35,892.50 to her daughter and son-in-law.
6. Any services the petitioner's daughter and son-in-law provided to her were done before she sold her home.

DISCUSSION

A person cannot receive institutional medical assistance if her assets exceed \$2,000. See Wis. Stat. §§ 49.46(1) and 49.47(4). Generally, a person cannot reach this limit by divesting assets, which occurs if she or someone acting on her behalf "disposes of resources at less than fair market value" within five years of later of when they were institutionalized and applied for medical assistance. Wis. Adm. Code, § DHS 103.065(4)(a); Wis. Stat. § 49.453(1)(f). If the person improperly divests her assets, she is ineligible for institutional medical assistance for the number of months obtained by dividing the amount given away by the statewide average monthly cost to a private pay patient in a nursing home at the time he applied. Wis. Adm. Code, § DHS 103.065(5)(b). Beginning on January 1, 2009, county agencies were instructed to use the average daily cost of care and determine ineligibility to the day rather than to the month. The daily amount is currently \$243.49. *Medicaid Eligibility Handbook*, § 17.5.2.2. A divestment does not bar eligibility if the individual intended to dispose of the resource for "other valuable consideration." Wis. Admin. Code, § 103.065(4)(d)2.a. In addition, a divestment does not affect eligibility if lack of eligibility would cause an "undue hardship." An undue hardship "means that a serious impairment to the institutionalized individual's immediate health status exists." Wis. Admin. Code, § 103.065(4)(d)2.d.

The county agency notified the petitioner on September 18, 2013, that her current benefits ended as of August 31, 2013, and she was ineligible for institutional benefits under the medical assistance program from July 1, 2013, through September 25, 2013, because she divested \$35,892.50 by giving that money to her daughter and son-in-law between June 22, 2013 to August 19, 2013. The petitioner contends that this money was for services those two provided to her before June 22, 2013.

The policy concerning services provided by relatives is found at *Medicaid Eligibility Handbook*, § 17.8. It states that if the total payment exceeds 10% of the community spouse asset share, "the institutionalized person must have a written, notarized agreement with the relative. The agreement must:

- a. Specify the service and the amount to be paid, and
- b. Exist at the time the service is provided."

The highest possible community spouse asset share is \$115,920. *Medicaid Eligibility Handbook*, § 18.4.3. This means that the provision covers anyone who paid relatives over \$11,592. It covers the petitioner's agreements with her daughter and son-in-law because she paid them over \$35,000. The petitioner entered into the agreement with them the day she sold her house. The parties agreed at the hearing that the services were all provided before she sold her house. Thus, the agreement is invalid because it was entered into after the services had already been provided. Further, the agreement was not notarized, so it would be invalid even if it had been entered into before the services were provided. Because the contract is not valid, the \$39,892.50 is a divestment. Dividing this amount by the \$243.49 average daily cost of a room in a nursing home gives 147, the number of days the agency correctly

determined was the divestment period. The petitioner presented no evidence that divestment finding would cause her to suffer a serious impairment to her immediate health status. Therefore, I must uphold the agency's finding.

CONCLUSIONS OF LAW

1. The \$35,892.50 the petitioner gave to her daughter and son-in-law is a divestment because it was not provided for services made pursuant to a valid, notarized contract that existed when the services were provided.
2. The county agency correctly determined that the petitioner is ineligible for institutional medical assistance for 147 because of a divestment.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 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 served and 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 9th day of December, 2013

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals