



Payment for Services = OK

FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

MDV/138130

PRELIMINARY RECITALS

Pursuant to a petition filed January 10, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Ashland County Department of Human Services in regard to Medical Assistance, a hearing was held on June 26, 2012, at Ashland, Wisconsin. Hearings scheduled for April 24, 2012, and May 24, 2012, were rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly determined that the petitioner is ineligible for institutional medical assistance for 15 days because of a divestment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Attorney Janet M. Lattyak
135 W Charles Street
Schofield, WI 54476

Respondent:

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

By: Beulah Garcia

Ashland County Department of Human Services
630 Sanborn Avenue
Ashland, WI 54806

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. On December 12,, 2011, the county determined that the petitioner was ineligible for institutional medical assistance from October 1—15, 2011, because she divested \$3,640.
3. The petitioner is 96 years old. She lived in her home until March 30, 2011, when she entered the nursing home.
4. After entering the nursing home, the petitioner had property that had to be sold and other financial affairs to get in order. She had one son who lived near her, but he was suffering from the effects of aging and could not assist her.
5. The petitioner named one of her daughters as her power of attorney for financial affairs in May 2011. The power of attorney document allowed her daughter reasonable compensation for any services provided to her.
6. The petitioner's two daughters flew from Florida to northern Wisconsin twice after she entered the nursing home to help her get affairs in order. Their plane tickets, motel room, and other costs related to this travel came to \$2,140. They could not stay at their mother's trailer because it had no electricity.
7. The petitioner's daughters reimbursed themselves a total of \$1,200 for their time and various expenses associated with putting their mother's affairs in order.

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 the later of when they were institutionalized or 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 \$215.48 *Medicaid Eligibility Handbook*, § 17.5.2.2. A divestment does not bar eligibility under the following circumstances found in Wis. Adm. Code, § 103.065(4)(d)2:

- a. The individual intended to dispose of the resource either at fair market value or for other valuable consideration;
- b. The resource was transferred exclusively for some purpose other than to become eligible for MA;
- c. The ownership of the divested property was returned to the individual who originally disposed of it; or
- d. The denial or termination of eligibility would work an undue hardship. In this subparagraph, “undue hardship” means that a serious impairment to the institutionalized individual's immediate health status exists.

Medical assistance policy requires county agencies to “[a]ssume that services...provided to each other by family members or other relatives were free of charge, unless there exists a written contract (made prior to the date of transfer) for payment.” *Medicaid Eligibility Handbook*, 17.2.9.5.

The petitioner is a 96-years-old woman who lived in a remote area of northern Wisconsin. When she entered the nursing home in March 2011, she had property, including a mobile home, that had to be sold and other financial affairs that had to be put in order. She had a son who lived near her, but he too suffers from the effects of aging and could not assist her. Two of her daughter who now live in Florida flew to Wisconsin twice after she entered the nursing home to get her affairs in order. They reimbursed

themselves for their travel expenses, including plane tickets and a hotel room (they could not stay at their mother's trailer because the utilities had been shut off), and \$10 a day reimbursement for their miscellaneous expenses and time. The petitioner had earlier made one of the daughters her power of attorney for financial affairs. That document allowed her daughters reasonable compensation for their services. The county agency determined that the \$3,640 spent by the petitioner's daughters for these purpose was a divestment that resulted in her being ineligible for medical assistance from October 1—15, 2011.

This is not a disqualifying divestment because the petitioner received something of value in return, none of the money was given to reduce her assets in order for her to become eligible for medical assistance, and the \$10 daily compensation is reasonable. Both daughters are retired in Florida. Nothing about these trips can be seen as a vacation for them or anything other than a mission of mercy to help their mother. Despite their own age, they took weeks out of their own lives and spent hours every day putting her affairs in order. Because this is not a divestment, the agency incorrectly denied eligibility to her from October 1—15, 2011.

CONCLUSIONS OF LAW

The petitioner is not ineligible for institutional medical assistance because of a divestment because she did not give any money away in order to become eligible for the program.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions to remove the finding that the petitioner divested \$3,340 and to find her eligible for institutional medical assistance retroactive to October 1, 2011.

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

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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 27th day of June, 2012

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

c:

