



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MDV/156359

PRELIMINARY RECITALS

Pursuant to a petition filed March 24, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the St. Croix County Department of Human Services in regard to Medical Assistance, a hearing was held on April 15, 2014, at New Richmond, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Jen Feyereisen

St. Croix County Department of Human Services
1445 N. Fourth Street
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) resided in a nursing home in St. Croix County until her death on March 7, 2014.

2. The petitioner applied for institutional medical assistance on January 27, 2014, requesting benefits retroactive to January 1, 2014. The county agency determined she was ineligible from January 1, 2014, through February 2, 2014, because of a \$8,223.38 divestment that allegedly occurred because of payments she made to her children. She was found eligible from February 3, 2014, until she died on March 7, 2014.
3. The petitioner entered the nursing home on August 7, 2013.
4. [REDACTED] was the petitioner's power of attorney. She claimed \$100 a month plus reimbursement for her services for three years before September 2013 and \$125 per month from September 2013 through January 2014. The total she claimed for these monthly payments was \$3,725. During this period she also claimed a total of \$3,900 for balancing the petitioner's checkbook each month. The agency disallowed \$3,725 of the claim because it duplicated the other portion of the claim.
5. [REDACTED] received \$1,066.36 for services performed for the petitioner. Of this, \$881.70 was paid on August 23, 2013, and \$184.66 on September 27, 2013. All of these services were performed before [REDACTED] signed a service contract with the petitioner on January 22, 2014. Of this amount, \$52 was not reasonable compensation for services directly benefiting her mother.
6. [REDACTED] signed a service contract with the petitioner on June 25, 2013. That contract called for her to be paid \$12 per hour for caregiving and \$25 per hour for medical appointments. She actually was reimbursed \$25 an hour for all services.
7. On July 23, 2013, [REDACTED] spent .75 hours and traveled 13.8 miles seeing a lawyer on behalf of her mother. The county disallowed this expense because it was not performed pursuant to the terms of the contract. This service directly benefited the petitioner.
8. From August 6, 2013, through August 8, 2013, [REDACTED] spent 20 hours and traveled 90 miles packing her mother's belongings. The county disallowed this expense because it was not performed pursuant to the terms of the contract. This service directly benefited the petitioner.
9. [REDACTED] sought reimbursement for two hours of care and 14 miles of travel for care allegedly given to her mother on August 8, 2013. The county disallowed this expense because the service was performed after the petitioner was in the nursing home. Whatever service was performed on this day did not directly benefit the petitioner.
10. [REDACTED] received a total of \$3,732.12 from her mother for services she performed. Of this amount \$252 was not reasonable compensation for services directly benefiting the petitioner.

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 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 she 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.

The petitioner seeks institutional medical assistance from January 1, 2014, until her death on March 7, 2014. Before she died, she received care from her three daughters and then reimbursed them. The county agency determined that a substantial portion of the payments were improper because they were not made

pursuant to a valid, existing contract or the daughter received duplicate payments for the same service. It determined that the petitioner divested \$8,223.28, which made her ineligible for 33 days, or from January 1, 2014, through February 2, 2014.

The policy for reimbursing relatives is found in *Medicaid Eligibility Handbook*, §17.8.1. It states:

It is divestment when an institutionalized person transfers resources to a relative in payment for care or services the relative provided to him/her. A relative is anyone related to the institutionalized person by blood, marriage, or adoption.

Count all the payments for care and services which the institutionalized person made to the relative in the last 36 months. The form of payment includes cash, property, or anything of value transferred to the relative. It is not divestment if all of the following conditions exist:

1. The services directly benefited the institutionalized person.
2. The payment did not exceed reasonable compensation for the services provided.
"Reasonable compensation" is the prevailing local market rate for the service at the time the service is provided.
3. If the amount of total payment exceeds 10% of the community spouse asset share (See 18.4.3 Calculate the CSA), 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.

[Examples omitted]

The highest possible community spouse asset share is \$117,340. *Medicaid Eligibility Handbook*, § 18.4.3. This means that the provision covers anyone who paid a relative more than \$11,734. The petitioner paid [REDACTED] a total of \$1,066.36, [REDACTED] \$3,732.12, and [REDACTED] at least \$7,625. The initial question is whether the agency can find that the petitioner divested money to [REDACTED] and [REDACTED] because they received money earned before their service contracts went into effect or received money for services not covered by the contracts. The basis of the agency's claim is that the total paid to all three of the daughters exceeded \$11,734.

Combining the amounts given to all three daughters makes some sense because it prevents a person from working around the limit by spreading smaller amounts of money out to a large number of persons. But this is not what the policy states. Each reference in the policy to the person receiving the money is singular; nothing in the policy instructs the agency to combine the amounts a person gives to all of her relatives. Thus the policy states: "It is divestment when an institutionalized person transfers resources to a *relative* in payment for care or services the *relative* provided to him/her." It also states: "Count all the payments for care and services which the institutionalized person made to the *relative* in the last 36 months." And finally, it states: "If the amount of total payment exceeds 10% of the community spouse asset share (See 18.4.3 Calculate the CSA), the institutionalized person must have a written, notarized agreement with the *relative*." Neither [REDACTED] nor [REDACTED] received more than \$11,734, so neither needs a contract to be reimbursed for her services. The agency concedes that [REDACTED] does not need a contract because she was the petitioner's power of attorney.

Because none of the petitioner's children needed a contract, any services that benefited her can be compensated if the amount paid is reasonable. The agency did not challenge the hourly rates listed in [REDACTED] and [REDACTED] contracts, so I will find that those rates are reasonable. The rates were \$25 per hour for medical transportation and \$12 for caregiving. The agency challenged charges made for packing the petitioner's belongings and moving her to the nursing home because they did not comply with the

contract's provision that the services were to keep her in the community. I find that these services directly benefited the petitioner because if her children did not pack her belongings, she would have to have hired someone else. [REDACTED] and [REDACTED] charged \$25 per hour for this service. Although this is more than they charged for caregiving, I find that it is reasonable because I doubt that one could find a mover for less than this. I also find that charges to get legal advice for the petitioner benefitted her and thus are allowable. (They were done before she went into the nursing home.) Because this service involves transportation, it is similar to medical transportation and can be reimbursed at \$25 per hour.

[REDACTED] charged \$25 per hour for four hours of daycare in July 2013. Reducing this by \$13 per hour to \$12 makes \$52 of this amount a divestment. I find no other funds that were divested to her. [REDACTED] charged \$25 per hour for 16 hours of care provided in June and July 2013. Reducing this by \$13 an hour to \$12 makes \$208 of this a divestment. In addition, she charged \$50 for care allegedly provided on August 8, 2013. She is not entitled to reimbursement for this because her mother was already in the nursing home. This means that the total amount divested to her was \$252.

[REDACTED] claimed \$100 a month plus reimbursement for her power of attorney services for three years before September 2013 and \$125 per month from September 2013 through January 2014 for a total \$3,725. During this period she also claimed \$3,900 for balancing the petitioner's checkbook each month. Because the main duty of a power of attorney is to handle a person's financial affairs, the agency determined that the \$3,725 monthly charge duplicated the \$3,900 reimbursement and did not allow it. I agree with the agency's reasoning and find that \$3,725 of the amount she received was not a reasonable charge that directly benefited the petitioner and therefore constitutes a divestment.

The petitioner divested a total of \$4,029 to her children. Dividing this by the \$243.49 average room cost makes her ineligible for 16 days, or from January 1 – 16, 2014. I will order the agency to make her eligible for institutional medical assistance retroactive to January 17, 2014.

CONCLUSIONS OF LAW

The petitioner was ineligible for medical assistance for 16 days because she divested \$4,029 by paying her children more than they were entitled for services they provided to her.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it find the petitioner eligible for institutional medical assistance retroactive to January 17, 2014, and to continue that eligibility through the date of her death.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of May, 2014

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



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 9, 2014.

St. Croix County Department of Human Services
Division of Health Care Access and Accountability