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

In the Matter of



DECISION

MDV/135429

PRELIMINARY RECITALS

Pursuant to a petition filed September 23, 2011, under Wis. Stat. § 49.45(5), to review a decision by the Fond du Lac County Dept. of Social Services to deny Family Care/Medical Assistance, a hearing was held on November 8, 2011, by telephone.

The issue for determination is whether petitioner divested a portion of her life estate.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Deb Gohlke
Fond du Lac County Dept. of Social Services
87 Vincent Street
Fond du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond du Lac County.
2. Petitioner applied for the Family Care Program (FCP) on August 22, 2011. The FCP, like institutional Medical Assistance, has an ineligibility penalty for divestment of assets.

3. In 1996, petitioner conveyed her home to her children, keeping a life estate. On April 1, 2010, the family sold the home to an unrelated buyer for \$120,000. The proceeds were paid out to petitioner's children and to petitioner, with petitioner receiving \$20,120.
4. The sale of the home was handled by an attorney with a real estate law practice. The attorney calculated petitioner's life estate remainder interest pursuant to his reading of the Section 7520 of the Internal Revenue Code. See September 23, 2011 letter from Atty. Ronald L. Petak.
5. Using the MA Handbook, Appendix 17.10.0 and the table at Appendix 39.1, the county determined that petitioner's value of the life estate at the time of the sale was \$43,970, and thus when she received just \$20,120, the result was a divestment of \$23,849, meaning that she would have a 110 day divestment penalty period. The county notified petitioner of the denial of her application by a notice dated September 15, 2011.

DISCUSSION

When an individual, the individual's spouse, or a person acting on behalf of the individual or his spouse, transfers assets at less than fair market value, the individual is ineligible for MA coverage of nursing facility services and MA community waiver services including FCP. 42 U.S.C. 1396p(c)(1)(A); Wis. Stat. §49.453(2)(a); Wis. Adm. Code §DHS 103.065(4)(a); MA Handbook, Appendix 17.2.1. Divestment does not impact on eligibility for standard medical services such as physician care, medications, and medical equipment (all of which are known as "MA card services" in the parlance). The penalty period is the number of days determined by dividing the value of property divested by the average daily nursing home cost to a private pay patient (\$215.48 in 2011). MA Handbook, App. 17.5. 2.2.

There are exceptions to the divestment rule at Wis. Adm. Code, §DHS 103.065(4)(d). Specifically, subsection (4)(d)2 provides that a person can be eligible for MA despite a divestment if the person intended to dispose of the asset at fair market value.

I conclude that petitioner intended to dispose of her life estate at fair market value. She and her children sold the home with the assistance of a real estate attorney. He determined the value of the life estate using federal tax laws, and thus all parties to the transaction believed, at the time of the sale, that petitioner was receiving the fair market value of the life estate. Therefore I conclude that the divestment is not a barrier to eligibility for FCP.

CONCLUSIONS OF LAW

Because petitioner intended to receive fair market value for her life estate, as determined by an attorney using federal tax law principles, any divestment that occurred due to her receiving less than the life estate value as calculated according to the Department's formula is not a barrier to MA/FCP eligibility.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to determine petitioner's FCP eligibility, disregarding any divestment penalty following the sale of her life estate. The county shall do so within 10 days 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 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).

Appeals to Circuit Court should name the Department of Health Services as the respondent. After filing the appeal with the appropriate court, it 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 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 November, 2011

/s/Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals

c:

[REDACTED]