STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS

In the Matter of

[redacted]

DECISION

MED-07/13241

P R E L I M I N A R Y R E C I T A L S

Pursuant to a petition filed February 27, 1997, under §§ 49.45(5) & 49.21(1)(b) Wis. Stats. to review a decision by the Burnett County Department of Social Services (County) to budget land contract income from property on which petitioner has a life estate toward petitioner's nursing home care for purposes of Medical Assistance (MA), a Fair Hearing was held on April 28, 1997 in Siren, Wisconsin.

A Fair Hearing set for April 3, 1997 was rescheduled at petitioner's request.

This matter concerns the same issue as a prior petition (MED-07/97455) dated August 22, 1996 and filed by petitioner's nephew, [redacted], on August 22, 1996. A Fair Hearing on that petition was set for September 17, 1997 in Siren, Wisconsin. Neither petitioner, [redacted] or any other representative of petitioner appeared on September 17, 1996. Consequently, by a *Decision* dated September 25, 1996, petitioner's petition MED-07/97455 was dismissed.

By *Letters of Guardianship*, signed by the Honorable James H. Taylor of the Burnett County Circuit Court on December 19, 1996 (File No. 96-GN-66), [redacted] of Grantsburg, Wisconsin was appointed guardian of the person and estate of petitioner because petitioner is incompetent. Exhibit #1. On February 27, 1997 petitioner's guardian filed this petition (MRA-7/13241), dated February 26, 1997. The appointment of [redacted] as petitioner's guardian because petitioner is incompetent is an altered condition that requires a *Decision* on the merits on the issue presented by petitioner's petitions.

The issue for determination is whether the County was correct to budget land contract income from property on which petitioner has a life estate toward petitioner's nursing home care for purposes of MA.

There appeared at that time and place the following persons:

PARTIES IN INTEREST: Petitioner:
[redacted] (not present at Fair Hearing)

[redacted]

BY: [redacted]

Department of Health and Family Services
Bureau of Welfare Initiatives
1 West Wilson Street
Room 350
P.O. Box 7851
Madison, Wisconsin 53707-7851
By: Janice Wieser, ESS
Burnett County Department of Social Services
P.O. Box 300-130
Siren, Wisconsin 54872

OTHER APPEARANCES: [redacted] petitioner's nephew

EXAMINER: Sean P. Maloney, Hearing Examiner
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN: [redacted] CARES No. [redacted] is a resident of Burnett County.

2. In August 1991 petitioner transferred certain property (the Property) to her nephew, [redacted] and retained a life estate for herself. Exhibits #2, #3 & #4.

3. In August 1991 [redacted] sold the Property on land contract to [redacted] and [redacted] Exhibits #2, #3 & #5.

4. Petitioner retains her life estate in the Property. Exhibits #3 & #5.

5. Petitioner has not sold or transferred her life estate in the Property.

DISCUSSION

The County's position is that part of the land contract income from the Property must be budgeted toward petitioner's nursing home care for purposes of MA. Apparently, the County took this position based on petitioner's ownership of a life estate in the Property. Exhibits #2 & #3. The County's position is not correct.

In August 1991 petitioner transferred certain property (the Property) to her nephew, [redacted] and retained a life estate for herself. In August

1991 [redacted] sold the Property on land contract to [redacted] and [redacted]. Petitioner retains her life estate in the Property.

A life estate is an unavailable asset. MA Handbook, Appendix 11.7.5. A recipient of MA may hold a life estate without affecting eligibility for MA. § HFS 103.06(6) Wis. Adm. Code; see also § 49.453(8) Wis. Stats.

Petitioner has not sold or transferred her life estate in the Property. see, § HFS 103.06(6) Wis. Adm. Code. There is no evidence in the record of this matter that petitioner is legally entitled to any portion of the land contract income. see, MA Handbook, Appendix 11.1.0 & 15.1.0.

Therefore, the County was not correct to budget land contract income from the Property toward petitioner's nursing home care for purposes of MA.

CONCLUSIONS OF LAW

The County was not correct to budget land contract income from the Property toward petitioner's nursing home care for purposes of MA.

NOW, THEREFORE, it is

ORDERED

the County not budget land contract income from the Property toward petitioner's nursing home care for purposes of MA and that, within ten days of the date of this *Decision*, the County issue to petitioner the MA benefits, if any, that petitioner is otherwise entitled to and that have not been issued to petitioner because of the budgeting of land contract income from the Property toward petitioner's nursing home care.

REQUEST FOR A REHEARING

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 Division of Hearings and Appeals, P. O. Box 7875, Madison, Wisconsin 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 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 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The appeal must be served on the Department of Health and Family Services, P.O. Box 7850, Madison, Wisconsin 53707-7850.

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 Madison, Wisconsin, this 12th day of May, 1997.

Sean P. Maloney, Hearing Examiner
DIVISION OF HEARINGS AND APPEALS
05091997/SPM

cc: Petitioner
Burnett County
[redacted]