DHA-15 (R10/97)

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-9/77193

PRELIMINARY RECITALS

Pursuant to a petition filed May 31, 2006, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Chippewa County Dept. of Human Services in regard to medical assistance, a hearing was held on August 30, 2006, at Chippewa Falls, Wisconsin. A hearing scheduled for July 20, 2006 was rescheduled at the petitioner's request.

The issue for determination is whether the county agency properly denied medical assistance to the petitioner under the spousal impoverishment provisions of the program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:
(petitioner)

Represented by:
Peter Grosskopf
1324 West Clairemont Avenue
Suite 10
Eau Claire, WI 54701

Respondent:

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Kelly Goettl, ESS
Chippewa County Dept Of Human Services
711 N. Bridge Street
Chippewa Falls, WI 54729-1877

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES #xxxxxxxxxx) resides in a nursing home in Chippewa County.
2. The petitioner's wife resides in the community.

3. The petitioner applied for medical assistance on April 28, 2006. The county agency denied the application on May 17, 2006, because his assets exceeded the program's limit.
4. The petitioner transferred his homestead property to his son through a land contract in 1997. Among the provisions of the contract was the following: "No party shall transfer, sell or convey any legal or equitable interest in the Property (by assignment of any of Purchaser's rights under this Contract or by option, long-term lease or in any other way) without the prior written consent of all parties."

DISCUSSION

The petitioner applied for medical assistance under the spousal impoverishment provisions of the program on April 28, 2006. The federal Medicare Catastrophic Coverage Act of 1988 is designed to protect from destitution a person whose spouse enters a nursing home and receives medical assistance. The law allows an institutionalized person to assign a portion of his assets to his spouse if she remains in the community. Wis. Stat. § 49.455(6). *Medical Eligibility Handbook (MEH)*, § 5.10.4.

The county agency denied the application on May 17, 2006, because his income and assets exceeded the MA limit. The primary asset preventing the petitioner from becoming eligible was a 1997 land contract that transferred the petitioner's homestead property to his son. At the hearing, the agency asserted that it was now denying eligibility because the petitioner failed to verify his assets. Because the agency did not provide notice of this to the petitioner in the denial notice that forms the basis of this hearing, I will determine the matter solely on whether the petitioner's assets exceeded the medical assistance limit.

The land contract contains the following provision: "No party shall transfer, sell or convey any legal or equitable interest in the Property (by assignment of any of Purchaser's rights under this Contract or by option, long-term lease or in any other way) without the prior written consent of all parties." Only liquid assets count against the asset limit. Wis. Stat. § 49.47(4)(b). The county agency contends that this limiting provision by itself is insufficient to make the land contract unavailable and thus not liquid. It did eventually concede that the contract was not available to the petitioner, but only after he submitted two statements from third parties who said that they would not buy the contract as it was written. By this time the application had expired and in order to qualify the petitioner would have to submit a new one, which would cause him to lose benefits. *See Medical Eligibility Handbook*, §1.2.7.1. In order to find that the petitioner's eligibility can be based upon his April 28, 2006, application it is necessary to find that the contract language itself makes it an unavailable asset.

I find that it does. This language has a specific legal affect that an administrative law judge as the determiner of the law can decide without relying on the opinion of potential buyers. It prevents the petitioner from selling the contract without the approval of a third person. Given the relationship between the two parties to the land contract—father and son—one would expect the third party to comply with the petitioner's wishes, but he has no legal obligation to do so. This means that the terms of the contract itself have the affect of prohibiting its sale by the petitioner, which makes it unavailable. *See Medical Eligibility Handbook*, § 4.5.7.12. If the petitioner had executed the land contract with this restrictive provision within the five-year lookback period it likely would be considered a divestment. *See DHA Decision No. MDV-56/72101.* But he did not, so it is merely an asset that cannot be counted in any way when determining the petitioner's asset limit.

I am remanding this matter to the county agency with instructions that it redetermine the petitioner's eligibility based upon the April 28, 2006, application date.

CONCLUSIONS OF LAW

The language of the 1997 land contract entered into by the petitioner makes that contract unavailable to him because it prevents him from selling it.

NOW, 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 determine the petitioner's eligibility for institutional medical assistance under the spousal impoverishment provisions of that program. It shall base his eligibility upon his April 28, 2006, application date and consider the 1997 land contract to be an unavailable asset. When making its decision, the agency shall consider all documentation of income and assets it now has in its possession. If the petitioner disagrees with the agency's determination he may file a new appeal.

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 Wisconsin Statutes § 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 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 Wisconsin Department of Health and Family Services. Appeals 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 650, P.O. Box 7850, Madison, WI 53707-7850.

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 Wisconsin Statutes §§ 227.52 and 227.53.

Given under my hand at the City of Eau Claire, Wisconsin, this 3rd day of October, 2006

/sMichael D. O'Brien
Administrative Law Judge