DHA-15 (R10/97)

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MDV-70/#50266

PRELIMINARY RECITALS

Pursuant to a petition filed August 22, 2001, under Wis. Stat. §49.45(5), to review a decision by the Winnebago County Dept. of Social Services to reduce Medical Assistance (MA), a hearing was held on September 27, 2001, at Neenah, Wisconsin.

The issue for determination is whether petitioner divested her home by transferring it pursuant to a 30-year land contract.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

(petitioner)

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: Mary Bath Gehrke, Case Manager
Winnebago County Dept. Of Human Services
211. N. Commercial Street
Neenah, WI 54956-2616

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Winnebago County.

2. Petitioner resides in a nursing home and receives institutional MA. Her home was exempt for some time because of the possibility that she would return to it. In spring, 2001, the department proposed to file a lien on the home property, alleging that petitioner was not likely to return.

3. On July 18, 2001, SC, acting as petitioner's attorney-in-fact, signed a land contract that sold the property to petitioner's son for $40,000. The land contract called for monthly payments of

$230.46 to run from August, 2001 through July 13, 2031. The sale of the property caused the department to withdraw its proposed lien.

4. Petitioner's life expectancy is 10 years.

5. By a notice dated August 15, 2001, the county informed petitioner that, effective September 1, 2001, her MA services would be changed to "card services" only, and her institutional MA would stop. The county determined that petitioner divested $57,384.54 in potential land contract payments due after the end of her life expectancy, thus resulting in 14 months of institutional MA ineligibility.

6. Benefits were not ordered to be continued pending this decision.

DISCUSSION

As a first point, when an MA recipient appeals a proposed reduction or termination of benefits prior to the proposed effective date, the recipient is entitled to continued benefits pending the appeal. 42 C.F.R. §431.231(c)(2); Wis. Stat. §49.45(5)(b)2. In this case the proposed action was a reduction in MA coverage, but the Division of Hearings and Appeals misread the action as a denial of MA, and it did not order continued benefits. Benefits should have been continued, and I will order the county to take that action for September and October, which are the months that the continued benefits order would have affected.

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 home expenses. Wis. Stat. §49.453(2)(a); Wis. Adm. Code §HFS 103.065(4)(a); MA Handbook, Appendix 14.2.1. 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 specified in Wis. Stat. §49.453(3), to be the number of months determined by dividing the value of property divested by the average monthly cost of nursing facility services (currently $4,075), beginning with the month of transfer.

The county agency concluded that the transfer via land contract was identical to the rule concerning a transfer to an annuity. The Wisconsin Administrative Code, §HFS 103.065(4)(at), provides that when a recipient transfers funds to an irrevocable annuity, and payments on the annuity are scheduled to extend beyond the recipient's life expectancy, there is a divestment in the total amount of payments scheduled to be made after the person's life expectancy. See also the MA Handbook, App. 14.11.0. None of the statute, administrative code provision, or the Handbook addresses such a situation with a land contract. However, it is evident that the transaction at issue in this case is essentially the same as an irrevocable annuity.

In an irrevocable annuity, a person transfers a sum of money in exchange for the promise of guaranteed periodic payments for a specified period of time. The rule thus provides that if the specified time period runs beyond the person's life expectancy, the payments scheduled to be made thereafter add up to a divestment. In this case, rather than transferring a sum of money, petitioner transferred a parcel of real estate. In return, she was guaranteed periodic payments for a specified period of time that runs beyond her life expectancy. The transaction has the same effect as the annuity divestment.

I conclude that, by transferring her home to her son via a land contract expected to extend beyond her life expectancy, petitioner has not received fair market value for the property, and the payments due after her life expectancy amount to a divestment. The county action is affirmed.

(petitioner son) testified that they did not intend to divest the property. Intent is not necessary. By transferring property without the expectation of receiving fair market value, in order to avoid an MA lien, petitioner's representatives committed a divestment. Furthermore, the combination of a lower than market value sale price (even after the city's reassessment lowered the property value from $67,000 to $54,000) with the lengthy contract period suggests to me that [redacted] did not intend to pay full value for the home, and thus the family's protest that they did not intend to divest lacks credibility.

CONCLUSIONS OF LAW

1. Because petitioner filed this appeal before the effective date, the county should not have taken the proposed action.
2. Petitioner divested an asset by agreeing to a repayment schedule that extended beyond her life expectancy.

NOW, THEREFORE, it is **ORDERED**

That the county should restore petitioner's institutional MA for September and October, 2001, as continued benefits pursuant to this appeal. In all other respects, the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A NEW HEARING

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 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 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 twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can 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 thirty (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 Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Madison, Wisconsin, this14th day of June, 2005

/s/sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals
1001/bcs