EXS-60 (Rev. 6/86)

STATE OF WISCONSIN
DEPARTMENT OF HEALTH & SOCIAL SERVICES

In the Matter of

[redacted]

DECISION

MDV-68/90583

PRELIMINARY RECITALS

Pursuant to a petition filed September 22, 1995, under sec. 49.45(5), Wis. Stats., to review a decision by the Waupaca County Dept. of Human Services to deny a Medical Assistance (MA) application, a hearing was held on October 12, 1995, at Waupaca, Wisconsin. At the request of all parties, the record was held open for two weeks (until October 26, 1995) for submission of closing arguments.

The issue for determination is whether the county agency correctly denied the petitioner's nursing home MA application due to alleged disqualifying divestments (the transfer of property to the petitioner's children with the petitioner receiving a promissory note and mortgage from each of her children), or due to excess assets.

There appeared at that time and place the following persons:

PARTIES IN INTEREST: Petitioner:
[redacted]

Wisconsin Dept. of Health & Social Services
Bureau of Welfare Initiatives
1 W. Wilson St., Room 350
P.O. Box 7851
Madison, WI 53707-7851
By: Atty. Jeffrey Siewert
Waupaca County Corporation Counsel
811 Harding Street
Waupaca, WI 54981-2087

EXAMINER: Gary M. Wolkstein, Attorney
Department of Health & Social Services

F I N D I N G S O F F A C T

1. Petitioner (SSN [redacted]; Cares #[redacted]) has been a resident of the [redacted] nursing home in Waupaca County since July 4, 1995. Her husband, [redacted] resides in the community.

2. On August 1, 1995, the petitioner's daughter and POA, [redacted], applied for MA on behalf of her mother. See Exhibit 1.

3. On September 1, 1993, the petitioner and her husband transferred the following property (portions of their farm) to their children:

a) property with a value of $32,900 to their son, [redacted] and his wife in exchange for a promissory note and a fixed rate mortgage note of six percent interest on the principal with final payment being made on September 1, 2013 at which time the final payment would be due in the amount of the then outstanding principal balance plus any accrued interest. See Exhibit 2A.

b) property with a value of $10,200 to their son, [redacted] and his wife under the same mortgage conditions as stated in Finding of Fact (FF) #3a, but with a principal balance due of $10,200. See Exhibit 2B.

c) property with a value of $3,500 to their son, [redacted] and his wife under the same mortgage conditions as stated above in FF #3a, but with a principal balance due of $3,500. See Exhibit 2C.

d) property with a value of $13,300 to their son, [redacted] and his wife under the same mortgage conditions as stated above in FF #3a, but with a principal balance due of $13,300. See Exhibit 2D.

e) property with a value of $16,700 to their son, [redacted] and his wife under the same mortgage conditions as stated above in FF #3a, but with a principal balance due of $16,700. See Exhibit 2E.

f) property with a value of $24,000 to their son, [redacted] under the same mortgage conditions as stated above in FF #3a, but with a principal balance due of $24,000. See Exhibit 2F.

4. The interest payments to the petitioner and her husband (resulting from the transfers as stated in Finding of Fact #3) increased the monthly income of the petitioner and her husband from $588 to $816 per month (an increase of $288 per month).

5. On August 14, 1995, the property that on September 1, 1993 had been transferred by the petitioner and her husband to [redacted] and his wife, was deeded back solely to the petitioner's husband. See Exhibit 2G.

6. The county agency sent a September 11, 1995 negative notice to the petitioner stating her MA nursing home application was denied due to the September, 1993 divestments. See Exhibit 3.

D I S C U S S I O N

An MA recipient may not have nonexempt assets in excess of $2,000. The recipient also may not give away nonexempt assets in an effort to become eligible for MA; such an act is a prohibited divestment. In this case, the county agency contended that when the petitioner and her husband transferred the portions of property to their children on September 1, 1993 (Finding of Fact #3), those transfers were divestments pursuant to the MA Handbook, Appendix 14.2.1. The county agency further contended that the petitioner did not receive fair market value (FMV) for those transfers because the petitioner and her husband's compensation was only consideration of $1 for each transfer, plus 6% monthly interest payments on the principal, with twenty year mortgages and then a balloon payment of all principal at the end of the 20 years.

A disqualifying divestment occurs for MA purposes when an institutionalized individual or his/her spouse disposes of nonexempt property for less than fair market value within the 30 months preceding the institutionalization. Sec. 49.45(17), Wis. Stats., §HSS 103.065(4), Wis. Adm. Code, MA Handbook, Appendix 14.2.2. "Disposal" is defined in the Handbook as "the act of changing legal title or other right of ownership to another person or persons." Id. If a divestment occurs, the individual is ineligible for MA for the number of months obtained by dividing the disposed amount by the statewide average monthly cost to a private pay patient in a nursing home. §HSS 103.065(5)(b), Wis. Adm. Code.

In the instant case, the county agency did not make the contention that the petitioner's assets were above the $2,000 asset limit, but only that the petitioner divested assets. However, as indicated in Finding of Fact #3, the petitioner and her husband received promissory notes and mortgages from each of their children in return for the transference of portions of property. These mortgages have monetary value as stated both in the mortgage notes (Exhibit 4) and in the Wisconsin Real Estate Transfer Returns for each property transfer. (Exhibits 2A-2F). The value of these mortgages is above $100,000.

The MA Handbook indicates that mortgages are assets. MA Handbook, Appendix 11.6.2 "Mortgages". The petitioner's attorney might argue that it would be difficult to sell these mortgages in the secondary mortgage market due to the unusual terms of the mortgages (only income payments for 20 years and then payment of all principal at the end of 20 years). However, even if that were true, these mortgages, nevertheless, clearly have value substantially in excess of the $2,000 asset limit. Moreover, on August 14, 1995, [redacted] and his wife transferred back property to the petitioner that is valued at $32,900. See Exhibit 2G. This asset, by itself, makes the petitioner above the MA asset eligibility limit as of August 14, 1995.

In his October 17, 1995 written argument and at the September 25, 1995 hearing, Attorney [redacted] contended that there was no divestment for two reasons: 1) the petitioner and her husband did receive value for the property (promissory notes and mortgages) they transferred to their children; and 2) the purpose of the transfers was to increase the monthly income of the petitioner and her husband from $588 to $816 per month. Contention #1 supports the conclusion that the petitioner's assets were above the MA asset eligibility limit. However, if Attorney [redacted] were to contend for any reason that the mortgages were valueless or not saleable, then the petitioner clearly had divested her property because she and her husband transferred property to their children for less than the fair market value of that property.

Attorney [redacted] also argued that an exception in the MA Handbook indicates that if an MA applicant shows that the divestment wasn't made with the intent of receiving MA, then the divestment that occurred during the lookback period does not affect MA eligibility. MA Handbook, Appendix 14.4.0, #1. However, the Wisconsin Administrative Code clearly states that this exception applies only if the transfer of the asset was "exclusively for some purpose other than to become eligible for MA." HSS 103.065(4)(d). The petitioner did establish that a purpose for the transfer was to increase the petitioner's monthly income from $588 to $816. However, the petitioner did not establish that the purpose of the transfer was exclusively for some purpose other than future MA eligibility. If the exclusive goal was to increase monthly income, the petitioner and her husband could have increased their monthly income considerably more by receiving monthly payments of income and principal as a condition of each of their mortgages from their children. The petitioner and her husband did not do so.

Therefore, whether the petitioner's MA application is denied due to excess assets (the value of the mortgages) or due to divestment (property transferred for valueless mortgages), the county agency correctly denied the petitioner's MA application.

C O N C L U S I O N S O F L A W

The county agency correctly denied petitioner's August 1, 1995 MA nursing home application.

NOW, THEREFORE, it is

O R D E R E D

That the petition for review herein be and the same if 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 Office of Administrative Hearings, 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 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 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 Social Services as respondent, 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 Court appeals is in Sec. 227.53 of the statutes.

Given under my hand at the City of Madison, Wisconsin, this 27TH day of DECEMBER, 1995.

Gary M. Wolkstein, Attorney
DEPARTMENT OF HEALTH & SOCIAL SERVICES
12-18-95gw

cc: Petitioner
Waupaca Co. DSS
[redacted]
Jeffrey Siewert, Corp. Counsel