



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MDV/169472

PRELIMINARY RECITALS

Pursuant to a petition filed October 15, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on February 02, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner divested \$31,337.00.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Attorney Nancy M. Bonniwell
400 Genesee St Suite D
Delafield, WI 53018-1801

Respondent:

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

By: Julie Miller

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Waukesha County.

2. The petitioner went into a nursing home July 23, 2015. She applied for institutional Medicaid effective July 23, 2015. On September 3, 2015 the agency sent the petitioner a notice stating that her institutional Medicaid application had been denied because of a divestment of cash.
3. During the divestment lookback period the petitioner's son, her power of attorney, wrote checks from the petitioner's checking account to himself, his brother, and one of their spouses. These checks totaled \$31,337.00. The county determined based upon these checks that there was a divestment in the amount of \$31,337.00.
4. The petitioner lived in a condo. Her son, who is now her power of attorney, owned 99% of the condo. The petitioner owned 1% of the condo. The petitioner had to be a partial owner of the condo because this particular condo association only allowed the owners of the condo to live in the condo. The association did not allow any rentals.
5. The petitioner's tax returns show that she is someone's dependent.
6. Between October 1, 2007 and May 7, 2014 the petitioner's power of attorney son paid \$25,050.00 for condo fees and assessments. This does not include a monthly mortgage payment. In March of 2014 the petitioner paid her son back \$15,000 for the some of the condo fees he had paid. She wrote three checks over a 13 day period. This leaves \$10,050 that in condo fees and assessments that the petitioner's son has paid without reimbursement. These fees occurred during the five year look back period. Part of the \$31,337.00 the petitioner paid to her relatives was to pay for these fees.
7. Between August 2010 and July 2015 the condo utilities totaled \$7,917.46. The petitioner's other son, not her power of attorney, covered these expenses. This son was not reimbursed, and part of the \$31,337.00 was to pay for these bills, which were incurred during the look back period.
8. In February 2012 the petitioner's son, who is her power of attorney, paid the petitioner's \$1,400 dental bill. The petitioner did not reimburse her son for this expense, and part of the \$31,337.00 was to pay for this bill.
9. The petitioner received meals on wheels during the entire five year look back period. The petitioner's power of attorney son paid \$5,188 for these meals. The petitioner did not reimburse him for this expense, and part of the \$31,337.00 was to pay for these meals.
10. The petitioner's son, who is her power of attorney, paid \$1,085.34 for the water and sewer bill at the condo between October 21, 2010 and August 17, 2015. The petitioner did not reimburse him for this expense, and part of the \$31,337.00 was to pay for these expenses.
11. The petitioner's daughter-in-law paid \$154.44 to Time Warner Cable for the petitioner's cable bill in 2011 and 2015. The petitioner did not reimburse her for this expense, and part of the \$31,337.00 was to pay for these expenses.
12. Between August, 2010 and February 1, 2013 the petitioner's son paid her \$300 each month to help cover her living expenses. After February 1, 2013 the petitioner was not paying rent for the condo where she lived. Her power of attorney son covered the mortgage and property tax on the condo until the petitioner went into a nursing home July 23, 2015. The petitioner did not reimburse him for any of these expenses. The total that he paid the petitioner between August 2010 and February 1, 2013 is \$9,300. The petitioner did not reimburse him for these expenses, and part of the \$31,337.00 was to pay for these expenses.
13. The expenses covered by the petitioner's family members during the five year look back period are as follows:

EXPENSE DESCRIPTION	AMOUNT
Condo Fees and Assessments	\$ 10,050

Condo Utilities	\$ 7,917.46
Dental Bill	\$ 1,400
Meals on Wheels	\$ 5,188
Water and Sewer Bill	\$ 1,085.34
Time Warner Cable Bill	\$ 154.44
Monthly Cash Payments	\$ 9,300
Total Payments	\$ 35,095.24

14. On October 16, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

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. 42 U.S.C. 1396p(c)(1)(A); Wis. Stat. §49.453(2)(a); Wis. Admin. Code §HFS 103.065(4)(a); Medicaid Eligibility 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 specified in sec. 49.453(3), Stats., to be the number of days determined by dividing the value of property divested by the average daily nursing home cost to a private pay. Medicaid Eligibility Handbook, App. 17.5.2.2.

Effective January 1, 2014 there is a five year look back period. Medicaid Eligibility Handbook, App. 17.3. Thus, any divestment occurring five years prior to a person's institutionalization impacts the person's eligibility for institutional Medicaid. Id. If the money paid to a person's family members is for the fair market value of expenses paid for by these family members, there is no divestment. See MDV/130919.

In this case the agency concluded that the petitioner had divested \$31,337.00. The agency reasoned that the petitioner had written a total of \$31,337.00 in checks to family members. They further reasoned that these checks were written on or about the exact date that she entered a nursing home, and therefore were written for the purpose of making the petitioner eligible for institutional Medicaid. The petitioner does not dispute that she wrote checks totaling \$31,337.00 to relatives during the five year lookback period. Rather, the petitioner argues that the checks were reimbursement for services her family paid for during the five year look back period. The petitioner's family has provided proof that they paid for over \$35,000 of the petitioner's actual expenses during the five year look back period.

The petitioner's son, who is her power of attorney, testified that the petitioner has dementia, and that her family had been helping her financially over a number of years. He testified that he was not aware of the money that his mother had in her checking account until she went into a hospital and then nursing home, and his power of attorney was activated. The petitioner's family has provided proof that they paid over \$35,000 of the petitioner's actual expenses during the five year look back period. They provided bank statements and/or cancelled checking showing that they actually paid all of these expenses. Some of the documentation that the family provided included expenses outside of the five year look back period. I did not count any of those expenses when determining whether or not a divestment occurred. These expenses are more than the county's alleged divestment. For that reason, I conclude that there was not a divestment in this case.

The county's position is that the expenses do not matter because of the timing of the checks. I disagree with the county's position. There is no policy supporting their position. There is a divestment when money is transferred for less than fair market value. The petitioner has not paid rent for several years while her sons paid for her living expenses. The documentation demonstrates that the petitioner's family paid for expenses far exceeding the alleged divestment amount in this case.

The agency questions why the family did not reimburse themselves sooner given that the petitioner generally had more than \$10,000 in her checking account. The petitioner's son testified that his mother had dementia, and that he did not have control over her finances until the time in which she became institutionalized activating his power of attorney. The petitioner also had cancer, and the family may not have thought that institutionalized care would become an issue. Regardless of the reason, the petitioner has shown that the fair market value of her expenses, for which her family members paid, far exceeded the alleged divestment amount. Thus, there is no divestment in this case.

CONCLUSIONS OF LAW

The agency incorrectly determined that the petitioner divested \$31,337.00.

THEREFORE, it is

ORDERED

That this case is remanded back to the agency to re-determine the petitioner's eligibility for institutionalized Medicaid with the instructions that there is no divestment. The agency shall comply with this order within 10 days from the date of decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of February, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 10, 2016.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability
Attorney Nancy Bonniwell