



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MGE/172409

PRELIMINARY RECITALS

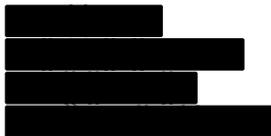
Pursuant to a petition filed February 26, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a hearing was held on April 05, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly concluded that a home is an available asset of the Petitioner in determining her eligibility for Medicaid.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: [Redacted]

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. On or about September 1, 2015, an application for long-term care Medicaid benefits was submitted on behalf of the Petitioner.

3. On January 5, 2016, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of assets including a request for information of the home in which the Petitioner had resided, located on [REDACTED], Milwaukee. The due date for the information was January 27, 2016.
4. On January 28, 2016, the agency issued a Notice of Decision to the Petitioner's guardian informing her that the Petitioner's application for long-term care Medicaid benefits was denied due to income exceeding program limits and failure to provide required information regarding the home on [REDACTED].
5. Per an affidavit provided by the Petitioner's guardian, the home on [REDACTED] was awarded to the Petitioner's husband by a probate court in 1988 as part of an inheritance. The home was titled in the Petitioner's husband's name only. He inherited the home prior to his marriage to the Petitioner. The Petitioner's name has never been added to the title. The Petitioner's husband passed away on December 7, 1997. The Petitioner lived in the home until her institutionalization in 2015.
6. On February 26, 2016, the Petitioner's guardian filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Medical Assistance (MA) is a state-federal program designed to pay for medical coverage for low income persons. To qualify for MA, a person must be both nonfinancially and financially eligible. To be financially eligible, a person must have assets that are under the program's asset limit, and income that is under the appropriate income limit.

Verification of countable assets is mandatory. Medicaid Eligibility Handbook (MEH), § 20.3.5. The applicant or recipient has primary responsibility for providing verification and resolving questionable information. MEH, §§ 20.1.4 & 20.5.

A homestead or home property is an exempt asset but there are limits on divesting home property. MEH, § 16.8.1.3. Also, for an institutionalized person, the home is exempt only if certain conditions are met. Id.

The agency is required to verify if a member or spouse has divested assets when determining eligibility for institutional MA. MEH, § 20.3.5.1. A divestment occurs if homestead property belonging to an institutionalized person or his/her spouse or both is transferred

1. For less than the fair market value of the income or asset by:
 - a. An institutionalized person, or
 - b. His or her spouse, or
 - c. A person, including a court or an administrative body, with legal authority to act in place of or on behalf of
 - d. A person, including a court or an administrative body, acting at the direction or upon the request of the institutionalized person or the person's spouse. This includes relatives, friends, volunteers, and authorized representatives.
2. It is also divestment if a person takes an action to avoid receiving income or assets he or she is entitled to. Actions which would cause income or assets not to be received include:
 - a. Irrevocably waiving pension income.

- b. Disclaiming an inheritance.
- c. Not accepting or accessing injury settlements.
- d. Diverting tort settlements into a trust or similar device.
- e. Refusing to take legal action to obtain a court-ordered payment that is not being paid, such as child support or alimony.
- f. Refusing to take action to claim the statutorily required portion of a deceased spouse's or parent's estate.** Count the action as a divestment only if:
 - The value of the abandoned portion is clearly identified, and
 - There is certainty that a legal claim action will be successful. The agency Corporation Counsel makes this determination.

This includes situations in which the will of the institutionalized person's spouse precludes any inheritance for the institutionalized person. Under Wisconsin law, a person is entitled to a portion of his or her spouse's estate. If the institutionalized person does not contest his or her spouse's will in this instance, the inaction may be divestment.

MEH, § 17.2.1.

Countable assets that must be verified also include the sale of a home and a life estate. MEH, §§ 16.8.1.5 and 16.8.1.6.

In this case, the burden is on the Petitioner's guardian to provide sufficient information to the agency to make a determination of eligibility. I conclude that the Petitioner and her guardian have not provided sufficient information.

The Petitioner has not provided information regarding the current legal status of ownership of the home or any interest that the Petitioner may have in the home. The Petitioner provided an affidavit stating that the home was inherited by the Petitioner's spouse prior. I will take this as sufficient verification of this assertion though I question why the Petitioner and her representatives have not been forthcoming with the marriage date. However, the Petitioner and her representatives have not provide any further documentation or verification regarding the Petitioner's possible legal interest in the home. If the Petitioner has been paying the mortgage or the real estate taxes or if marital property of the couple was used to do so, the character of the home or a portion of it may have changed to non-marital property. Further, the agency has requested but not received any verification or information regarding any agreement between the Petitioner and her husband's children regarding her living in the property after his death. If any type of life estate was granted, it may be a countable asset. The Petitioner's guardian testified that the home should be considered part of the Petitioner's husband property and that the children of the Petitioner's husband are probating his estate. Yet, it has been almost 20 years since his death and the Petitioner's representatives have not produced any evidence that there is or has been any action commenced to probate his estate. There is no information regarding whether the Petitioner's husband had a will or how or to whom the home is to pass.

It is not within my authority to order the agency or the Petitioner's guardian to have their respective attorneys commence a receivership action or probate action but the lack of any legal action regarding the status of this property means that the Petitioner and her representatives cannot submit the required verification to allow the agency to make a determination regarding the Petitioner's eligibility for Medicaid. Therefore, I conclude that the agency properly denied the Petitioner's application for MA based on the Petitioner and her representatives not meeting their burden of submitting sufficient

information regarding the home on [REDACTED] [REDACTED] to allow the agency to make an eligibility determination.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner’s application for MA based on the Petitioner and her representatives not meeting their burden of submitting sufficient information regarding the home on [REDACTED] to allow the agency to make an eligibility determination.

THEREFORE, it is **ORDERED**

That the Petitioner’s appeal is dismissed.

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 23rd day of May, 2016

\sDebra Bursinger
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 May 23, 2016.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability
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