



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION

MGE/143379

PRELIMINARY RECITALS

Pursuant to a petition filed August 23, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Pierce County Department of Human Services in regard to Medical Assistance, a hearing was held on September 20, 2012, at Ellsworth, Wisconsin.

The issue for determination is whether the county agency correctly determined that a trust set up for the petitioner's benefit is an available asset that makes the petitioner ineligible for institutional medical assistance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Attorney Jennifer A. O'Neill
900 Crest View Drive Suite 220
Hudson, WI 54016

Respondent:

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

By: Carol Hilsgen

Pierce County Department of Human Services
412 West Kinne Street
PO Box 670
Ellsworth, WI 54011

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) was a resident of Pierce County. She died on August 24, 2012.
2. The petitioner applied for medical assistance on July 16, 2012. The county agency denied his application on July 17, 2012, because his assets exceeded the program's limit.
3. An irrevocable trust was established in 1992 for the petitioner and his late wife's benefit. That trust was established by his children with assets he had temporarily transferred to them.
4. The trust has held over \$127,000 at all times relevant to this decision.

DISCUSSION

A person generally cannot receive medical assistance if his available assets exceed \$2,000. Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. § 49.47(4)(b)3g. If the person sets up an irrevocable trust with his own funds and there are circumstances under which payment from the trust could be made to or for [his] benefit," the trust is considered an available asset when determining his medical assistance eligibility. Wis. Stat. § 49.454(3)(a). The county agency denied the petitioner's application for institutional medical assistance after finding that he is the beneficiary of a trust holding over \$100,000 in assets that was set up with his funds in 1992. Neither party disputes the size or the existence of the trust or that it provides benefits to him. The sole dispute centers on the petitioner's contention that his assets were not used to establish the trust.

The basis of this dispute is that the petitioner temporarily transferred his assets to his children, who then used those assets to set up the trust. The Wisconsin Court of Appeals definitively answered this question *Hedlund v. Wisconsin DHS*, 2010 AP 3070 (2011). It found that temporarily giving one's assets to another who then set up a trust for donor's benefit did not change the fact that the trust was still considered to be set up with the donor's assets. In doing so, it rejected Hedlund's argument that the ALJ engaged in speculation when he found that transferring money from the parents to the children was merely an intermediate step designed solely to set up a trust for the parents' benefit. The decision stated that this finding is "certainly a reasonable inference from the evidence, if not the only reasonable inference." *Hedlund*, 2010 AP 3070 ¶¶ 20 and 22.

Because the facts in the matter before me are identical in all relevant respects to those in *Hedlund*, that decision applies. Therefore, the 1992 irrevocable trust is an asset attributable to the petitioner that leaves him ineligible for medical assistance.

CONCLUSIONS OF LAW

1. The trust set up in 1992 for the petitioner's benefit is funded with his assets.
2. The petitioner's assets exceed the medical assistance limit.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

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 Wis. Stat. § 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 with the appropriate court 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 Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

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 Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 1st day of October, 2012

Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals

c: Pierce County Department of Human Services - email
Department of Health Services - email
Jennifer A. O'Neill, O'Neill Elder Law - e-mail



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 1, 2012.

Pierce County Department of Human Services
Division of Health Care Access and Accountability
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