



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MGE/144664

PRELIMINARY RECITALS

Pursuant to a petition filed October 22, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on November 29, 2012, at Menomonie, Wisconsin.

The issue for determination is whether the petitioner failed to adequately verify essential information and whether her life estate affects her eligibility for medical assistance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Paula Goodell

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Dunn County.
2. The petitioner is 92 years old. She lives in a group home.

3. The petitioner applied for medical assistance on August 20, 2012. The county agency denied the application on September 25, 2012.
4. The petitioner and her late husband sold their farm to their son and daughter-in-law on a land contract dated January 30, 1987. They retained a life estate in the house on the property that gave them the right “to live on the premises so long as they desire, which right shall only be distinguished [sic] by their deaths.” The petitioner and her husband transferred the property, except the life estate in the house, to their son and daughter-in-law by a warranty deed on January 10, 1997.
5. The petitioner moved out of the house on which she holds a life estate in December 2010. Her son rents that house out for \$700 per month. His expenses for the house exceed \$900 per month.
6. On August 22, 2012, the county agency requested that the petitioner verify savings and checking accounts held at Westconsin Credit Union and “MONEY FROM OTHER PERSON: Type of income received; Amount received per month.” Examples of this included “Current Statement or Document with source type and amount; Check Stubs; or Tax Forms.” Nothing in the request specifically indicated that the agency was seeking information concerning the petitioner’s life estate or money she earned from that life estate.
7. The petitioner’s children tried to obtain guidance from the agency concerning the verification but were unable to speak with anyone.
8. The petitioner has less than \$2,000 in assets.

DISCUSSION

The petitioner is a 92-year-old woman who lives in a group home. The county agency denied her request for medical assistance because it contends she did not verify information concerning a life estate she holds in her former residence and because she may have divested assets or income she was entitled to from the rental of that property.

Medical assistance rules require recipients to verify various information, including income and assets. Wis. Admin. Code, § DHS 102.03(3). Agencies may deny applications if an applicant “is able to produce required verifications but refuses or fails to do so” within 10 days of the date they are requested...” *Medicaid Eligibility Handbook*, § 20.7.1.1.; *see also* Wis. Admin. Code § DHS 102.03(1). On August 22, 2012, the agency requested that by September 19, 2012, the petitioner verify savings and checking accounts held at Westconsin Credit Union and “MONEY FROM OTHER PERSON: Type of income received; Amount received per month.” Examples of this included “Current Statement or Document with source type and amount; Check Stubs; or Tax Forms.” The petitioner provided information concerning her bank accounts, but the agency contends she failed to provide information concerning income derived from renting out her life estate.

The petitioner and her husband reserved the life estate in the house in which they lived when they sold their farm on a land contract to their son and daughter-in-law in 1987. Ten years later they quitclaimed the property to them, but continued to hold the life estate. Her husband died in 2004. She moved off from the property into an assisted living facility after suffering a severe burn in December 2010 that led to the amputation of all of the fingers on her left hand other than her thumb. At some point her son began renting the house out.

The agency’s request is too vague to expect the petitioner or her children to understand that it was seeking information about her life estate. Moreover, the petitioner’s children testified credibly that they sought help from the agency but that no one returned their calls. Based upon this, I find that they were unable to produce the required verifications and that the agency cannot deny their eligibility for lack of verification.

I had difficulty following the agency's remaining reasons for denial. It is not clear how much the petitioner and her husband received for the property sold to their son and daughter-in-law. But any divestment would no longer affect her eligibility because she transferred all interests in the property other than the life estate 15 years ago, which is well beyond the lookback date. The agency did express concern about the income the petitioner's son receives from renting the house covered by the life estate. However, he provided evidence showing he receives \$700 in rent on the house but pays out over \$900 in expenses. Because the expenses exceed the income, there is no income to attribute to the petitioner and thus this does not affect her eligibility.

There does not appear to be any other impediment to the petitioner's eligibility. The agency's notice to her indicates that her assets are below \$2,000 and that her gross income, other than any amount received in rent from her former dwelling, is \$1,320.82. However, because the agency based the petitioner's ineligibility on her lack of verification, it did not make certain necessary findings such as the amount of her cost share. Also, because I had trouble following the agency's case, there may be some other outstanding issues. Because of this, I will remand this matter to the agency to continue processing her application. When doing so, it shall assume her assets are under \$2,000 and that her income is \$1,320.82.

CONCLUSIONS OF LAW

1. The petitioner has not failed to verify any information that she was capable of verifying.
2. The petitioner has not divested any income or assets.
3. The petitioner's assets do not exceed the medical assistance limit.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it continue processing the petitioner's application for medical assistance. When doing so, it shall assume that her assets are less than \$2,000 and that her gross income is \$1,320.82. It shall assume that she has not divested any income or assets. If she disagrees with the agency's determination, she may file a new appeal.

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 served and 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, 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 19th day of December, 2012

\sMichael D. O'Brien
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 December 19, 2012.

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