



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

MGE/145794

PRELIMINARY RECITALS

Pursuant to a petition filed December 05, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held on January 15, 2013, at Madison, Wisconsin. With petitioner's agreement the record of the January 15th Hearing was held open until January 18, 2013.

The issue for determination is whether a tree farm owned by petitioner is an exempt asset for purposes of MA.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] (not present at January
15, 2013 Hearing)

[REDACTED]

Petitioner's Representative:

Attorney John Haslam
Wilson Law Group LLC
7633 Ganser Way Suite 100
Madison, WI 53719

Respondent:

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

By: Ron Redell, ES Supervisor
Kara Ponti, Lead ESS
David Bernhardt, ESS
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

OTHER PERSON PRESENT:

[REDACTED] petitioner's son

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner owns [REDACTED] [“[REDACTED]”] which is a tree farm.
3. [REDACTED] has been in petitioner’s family since 1968 or 1969 and since that time there have been 3 tree harvests; the last tree harvest was in 2002 and 2003 and produced a profit (approximately \$30,000 in 2002 and approximately \$27,000 in 2003).
4. [REDACTED] is part of the State of Wisconsin Forest Croplands program; cutting of timber on lands in the Forest Croplands program may be prescribe by the Wisconsin Department of Natural Resources [“DNR”]. See, Wis. Stat Chapter 77; and, Wis. Stat. § 77.06(1) (2011 -2012).

DISCUSSION

Business assets are generally income producing property. For MA, assets directly related and essential to producing goods or services are exempt. In MA Elderly, Blind, and Disabled [“EBD”] cases, all real and non-real business property is exempt if the business is currently operating for the self-support of the EBD individual. There is no profitability test. *Medicaid Eligibly Handbook* [“MEH”] 15.6.3.1.

A business is operating when it is ready to function in its specific purpose. The period of operation begins when the business first opens and generally continues uninterrupted up to the present. A business is operating even if there are no sales and no work is being performed. Thus a seasonal business operates in the off season unless there's been a significant change in circumstances. A business is not operating when it cannot function in its specific purpose. For instance, if a mechanic cannot work for 4 months because of an illness or injury, he may claim his business was not in operation for those months. MEH 15.6.1.3.

In this case it appears that there has been a tree harvest at [REDACTED] approximately every 11 to 12 years (2003 minus 1968 is 35 years divided by 3 harvests). Given the slow growth rate of trees this is not unreasonable. Based on this the next harvest is not due for about another 1 or 2 years. Petitioner’s son testified that he did not know when the next harvest would be. He testified that a 120 acres would be harvested when the state forester recommends it.

Based on the above policy and facts it must be concluded that [REDACTED] is an operating business. Therefore, it is an exempt asset for purposes of MA.

CONCLUSIONS OF LAW

For the reasons discussed above, the tree farm owned by petitioner ([REDACTED]) is an exempt asset for purposes of MA.

THEREFORE, it is

ORDERED

That this matter be REMANDED to the County, that the County regard the tree farm owned by petitioner ([REDACTED]) as an exempt asset for purposes of MA, and that, within 10 days of the date of this Decision, the County redetermine petitioner's eligibility for MA.

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 12th day of February, 2013

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 12, 2013.

Dane County Department of Human Services
Division of Health Care Access and Accountability
john.haslam@wilsonlawgroup.com