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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

MDV/146155

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 24, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Manitowoc County Department of Human Services in regard to Medical Assistance, a hearing was held on January 30, 2013, at Manitowoc, Wisconsin.

The issue for determination is whether \$51,000 placed in escrow in attorney trust account for payment to contractors should be counted as a divestment of an asset for MA eligibility purposes.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Petitioner's Representative:

Attorney Alison Petri  
903 Washington Street  
P O Box 1868  
Manitowoc, WI 54221-1868

Respondent:

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

By: Deb Williquette

Manitowoc County Department of Human Services  
3733 Dewey Street  
Manitowoc, WI 54221-1177

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County.
2. Petitioner entered a nursing home in January 2012.

3. On June 1, 2012, petitioner requested an assessment of assets for long term care medical assistance eligibility purposes.
4. On May 29 and June 11, petitioner's wife entered into various contracts for home improvements to the couple's residence.
5. In July 2012, petitioner's wife deposited \$51,000<sup>1</sup> with the couple's attorney as part of an escrow agreement (see ex. # 1 at tab 4). The funds were to be used only for the payment of the home improvement contractors.
6. The Department then undertook an assessment of petitioner's available assets and determined that the \$51,000 was a divestment.
7. The entirety of the funds were paid out of the escrow account to home improvement contractors as intended before the end of October 2012.
8. On November 15, 2012, petitioner filed an application for MA. The Department determined that the \$51,000 was a divested asset.
9. Petitioner filed a timely appeal.

### DISCUSSION

A person cannot receive institutional medical assistance if her assets exceed \$2,000. See Wis. Stat. §§ 49.46(1) and 49.47(4). Generally, a person cannot reach this limit by divesting assets, which occurs if she or someone acting on her behalf "disposes of resources at less than fair market value" within five years or later of when she was institutionalized and applied for medical assistance. Wis. Admin. Code, § DHS 103.065(4)(a); Wis. Stat. § 49.453(1)(f).

If the person improperly divests her assets, she is ineligible for institutional medical assistance for the number of months obtained by dividing the amount given away by the statewide average monthly cost to a private-pay patient in a nursing home at the time she applied. Wis. Adm. Code, § DHS 103.065(5)(b). Beginning on January 1, 2009, county agencies were instructed to use the average daily cost of care and determine ineligibility to the day rather than to the month. The daily amount is currently \$215.48 *Medicaid Eligibility Handbook*, § 17.5.2.2. A divestment does not bar eligibility if "[t]he resource was transferred exclusively for some purpose other than to become eligible for MA."

The parties agreed that the only issue in dispute is whether the \$51,000 placed in "escrow" and held in the attorneys' trust account for the purposes of payment of home improvement contractors was a divestment, and, if so, the consequences of that divestment. I conclude that this was not a divestment.

The critical inquiry to me hinges on the definition of "divestment" in the *Medicaid Eligibility Handbook*:

#### **17.2.1 Divestment**

"Divestment" is the transfer of income, non-exempt assets, and *homestead* property (See 17.2.3.1 Homestead Property), which belong to an institutionalized person or his/her *spouse* or both:

1. **For less than the fair market value of the income or asset** by:
  - a. An institutionalized person, or
  - b. His/her spouse, or

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<sup>1</sup> Other funds were also deposited for other purposes. As these funds were not found to have been divested, they are not at issue in this appeal and will not be discussed.

- c. A person, including a court or an administrative body, with legal authority to act in place of or on behalf of the institutionalized person or the person's spouse, or
- 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.

*Medicaid Eligibility Handbook* § 17.2.1 (emphasis added). Petitioner appears to have received fair market value for the expense of the asset. The asset was indeed spent on home improvements. This is demonstrated by the record. The Department has not argued or offered any evidence that the value of the home improvements was less than the funds ultimately spent on them. The home improvements were not a gift. But petitioner received value for such expense. The funds were paid out to the home improvement contractors prior to the application for MA. The interest in the home was not conveyed to anyone else but remains in petitioner and his wife. Under these specific facts, I consider this akin to a homeowner paying directly to the contractors the funds for the improvements prior to filing an MA application. That would not be a divestment.

I can understand the Department's concern about this transaction. It certainly seems unusual. And, I have no doubt that it was devised with the attorney's assistance and with the intent to become eligible for MA. The timing of the contracts, escrow and the MA inquiry leads to that presumption. It seems that the Department's concern was raised by the placement of the funds in the attorney's trust account to be held by the attorney for payment later on. I agree that this plan is unusual. Most homeowners would simply pay a deposit to a contractor with periodic payments thereafter as work was completed. Petitioner's concern with paying the entire amount to the contractor in advance seems unfounded unless this contractor's business practices are well outside the norm with which I am familiar. But, under the specific facts of this case, *especially because the entirety of the funds were actually disbursed to contractors prior to the filing of the application for MA* (see ex. #1 at tab 6), it appears that this should not be considered a divestment. Had funds remained in the escrow account at the time of the MA application, this would have likely changed the result in this case as the funds would more appropriately been considered part of a trust and a divestment under *MEH* § 17.13.

### **CONCLUSIONS OF LAW**

The \$51,000 placed in escrow in the attorney's trust account for purposes of payment to home improvement contractors was not a divestment.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the Department and its county agent with instructions to reverse the determination that the \$51,000 was a divested asset, and to redetermine MA eligibility consistent with that non-divestment. These actions shall be completed within 10 days.

### **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 7th day of March, 2013

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\sJohn P. Tedesco  
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 March 7, 2013.

Manitowoc County Department of Human Services  
Division of Health Care Access and Accountability  
[alison@steimlebirschbach.com](mailto:alison@steimlebirschbach.com)