



FH

[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDV/147109

PRELIMINARY RECITALS

Pursuant to a petition filed February 01, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Marathon County Department of Social Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on February 26, 2013.

The issue for determination is whether or not it was correct to impose an institutional MA ineligibility penalty period on petitioner because he divested assets.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] (not present at February 26, 2013 Hearing)
c/o [REDACTED]
[REDACTED]
[REDACTED]

Represented by:

[REDACTED], petitioner's granddaughter
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Sherri Seubert, ESS
Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [REDACTED]; age 101 years) is a resident of Marathon County.

2. Petitioner gave away \$76,125.21 of his money to, among others, relatives and a church.
3. The County imposed an institutional MA ineligibility penalty period because petitioner divested assets; the penalty period runs from January 1, 2013 to December 20, 2013.

DISCUSSION

With certain exceptions not applicable here, if an individual, or another person acting on behalf of the individual, transfers assets for less than Fair Market Value ["FMV"] on or after the individual's look-back date (such transfers are commonly known as *divestment*), the individual is ineligible for institutional MA for a specified time period. Wis. Stat. § 49.453(2)(a) (2011-12); See also, Wis. Admin. Code § DHS 103.065(4)(a) (December 2008); *Medicaid Eligibility Handbook* ["MEH"] 17.2.1 et. seq. The divestment penalty period is the number of months obtained by dividing the total uncompensated value of the transferred assets by the statewide average monthly cost to a private pay patient in a Skilled Nursing Facility ["SNF"] at the time of application. Wis. Stat. § 49.453(3)(b) (2011-12); Wis. Admin. Code § DHS 103.065(5)(b) (December 2008); MEH 17.5.2.

Petitioner does not deny that the money he gave away was a divestment and does not dispute the calculation of the institutional MA ineligibility penalty period. Therefore, it was correct to impose an institutional MA ineligibility penalty period on petitioner because he divested assets.

If he wishes petitioner may contact his local County agency and apply for a hardship waiver. There is no divestment, and no divestment ineligibility period, if the divestment ineligibility period would work an undue hardship. Wis. Stat. § 49.453(8)(a)2. (2011-12); See also, Wis. Admin. Code § DHS 103.065(4)(d)2.d. (December 2008); MEH 17.17.1. An *undue hardship* exists if the divestment ineligibility period would deprive the individual of medical care to the extent that the individual's health or life would be endangered, or would deprive the individual of food, clothing, shelter, or other necessities of life. Wis. Stat. § 49.453(8)(b)1. (2011-12). An undue hardship means that a serious impairment to the individual's immediate health status exists. Wis. Admin. Code § DHS 103.065(4)(d)2.d. (December 2008); See also, MEH 17.17.1.

CONCLUSIONS OF LAW

For the reason discussed above, it was correct to impose an institutional MA ineligibility penalty period on petitioner because he divested assets.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 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 9th day of April, 2013

\sSean P. Maloney
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 April 9, 2013.

Marathon County Department of Social Services
Division of Health Care Access and Accountability