



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/147316

PRELIMINARY RECITALS

Pursuant to a petition filed February 13, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Chippewa County Department of Human Services in regard to Medical Assistance, a hearing was held on March 19, 2013, at Chippewa Falls, Wisconsin.

The issue for determination is whether the county agency correctly determined that the petitioner was ineligible for medical assistance because of a divestment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Cindy Carlson

Chippewa County Department of Human Services
711 N. Bridge Street
Chippewa Falls, WI 54729-1877

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Chippewa County.

2. The petitioner applied for institutional medical assistance on November 14, 2012. The agency determined that she was ineligible from December 1, 2012, through March 21, 2013, because of a divestment.
3. The petitioner's assets have been under \$2,000 since December 2012.
4. The agency offered no evidence that the petitioner reduced her assets to below \$2,000 by giving them away without receiving anything in return.

DISCUSSION

The petitioner's daughter applied for institutional medical assistance on the petitioner's behalf on November 14, 2012. A January 23, 2013, an agency notice indicated that she would be eligible when she met a \$9,111.72 deductible that ran from January 1, 2013, through June 30, 2013. Why it indicated this is a mystery because the agency worker said that the petitioner was not ineligible because of her income. A deductible only occurs if the applicant meets the medical assistance program's non-financial conditions, such as being disabled or elderly, but has net income that exceeds the program's limit. When this occurs, the person does not become eligible until she pays a deductible equal to the amount by which her income exceeds the program's limit. *See Wis. Stats. § 49.47(4)(c)2 and Wis. Admin. Code §§ DHS 101.03(97), 103.08(2)(a), and 103.08(2)(c).* Because a deductible relates to excessive income, if the petitioner's income did cause her to be ineligible, then she could not have had a deductible.

The agency now contends that the petitioner was ineligible from December 1, 2012, through March 21, 2013, because of a divestment. If a divestment occurred, the agency neither notified the petitioner of this in writing or offered any proof of it at the hearing.

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 of the later of when they were institutionalized or 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 he applied. *Wis. Admin. 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.*

The basis of the allegation is that the petitioner paid her daughter to care for her without a contract. Medical assistance policy requires county agencies to "[a]ssume that services...provided to each other by family members or other relatives were free of charge, unless there exists a written contract (made prior to the date of transfer) for payment." *Medicaid Eligibility Handbook, 17.2.9.5.* The petitioner lived with her daughter who cared for her until her health deteriorated to the point that her daughter could no longer do so. The petitioner did give her money. The problem is that the worker came to the hearing without a shred of evidence concerning how this money was spent. Indeed, although the agency argued for a 111-day period of ineligibility, the worker was unable to even testify to the total amount divested. It became apparent that she had no idea how this figure was arrived at. This evidence is necessary because it is undisputed that the money the petitioner gave her daughter was spent on a variety of different things, all of which benefited the petitioner. I understand the ever increasing workload agency workers face and the diminished resources they have to meet this load. Still, these are evidentiary hearings, and when the agency offers no proof of how it determined a divestment occurred, it cannot prevail. I will remand this matter to the agency with instructions that it find the petitioner eligible for medical assistance retroactive to December 1, 2012, the first day of the first month in which her assets did not exceed \$2,000.

CONCLUSIONS OF LAW

The county agency incorrectly determined that a divestment made the petitioner ineligible for institutional medical assistance because it presented no evidence that she divested any assets.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that with 10 days of the date of this decision it take all steps necessary for the petitioner to receive retroactive institutional medical assistance from December 1, 2012, through March 21, 2013, the period it had determined that she was ineligible because of a divestment. Nothing in this decision implies that the petitioner is ineligible for benefits after March 21, 2013.

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 April, 2013

\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 April 12, 2013.

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