



FH
[REDACTED]

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

In the Matter of

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

DECISION

MGE/147346

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 St. Croix County Department of Human Services in regard to Medical Assistance, a hearing was held on March 20, 2013, at New Richmond, Wisconsin. The record was left open for 14 days at the petitioner's request.

The issue for determination is whether the petitioner is entitled to have her period of ineligibility due to a divestment shortened.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

Attorney Jennifer A. O'Neill
900 Crest View Drive Suite 220
Hudson, WI 54016

Respondent:

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

By: Angie Magoon

St. Croix County Department of Human Services
1445 N. Fourth Street
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) was a resident of St. Croix County. She died on January 6, 2013.

2. The petitioner was found ineligible for medical assistance for 686 days, for from April 1, 2011, through January 14, 2013, because she divested \$140,357.11 by giving the money to her children.
3. The average daily cost of a nursing stay on April 1, 2011, was \$204.60.
4. The petitioner applied for medical assistance on December 28, 2012. She seeks benefits beginning on October 1, 2012.
5. From June 15, 2012, through September 21, 2012, the petitioner's children returned \$28,474 to her by paying for her nursing home costs.

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 of later of when they were institutionalized and applied for medical assistance. Wis. Adm. 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. 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. A divestment penalty period can be reduced or eliminated if the asset is returned. Wis. Admin. Code, § DHS 103.065(4)(d)2.c.

The petitioner was found ineligible for medical assistance for 686 days, running from April 1, 2011, through January 14, 2013, because she divested \$140,357.11 by giving the money to her children. Since then, her children have paid \$28,474 of her nursing home costs. Paying for nursing home care is considered the same as returning an asset and thus reduces the divestment disqualification period. *Medicaid Eligibility Handbook*, § 17.5.5.2. That section of the *Medicaid Eligibility Handbook* provides instructions on the mechanics of shortening the divestment period:

To shorten a divestment penalty period when some of the originally divested amount is returned, subtract the divestment amount returned from the original divestment amount. Then divide the divestment remainder by the original average nursing home pay rate that was used to calculate the original divestment penalty period. Use the begin date of the original divestment penalty period as the begin date of the new shortened penalty period.

When the petitioner was found ineligible, the average nursing home daily pay rate that was used to calculate the divestment penalty period was \$204.60, which can be seen by dividing the \$140,357.11 divested by the 686 days she was found ineligible. Subtracting the \$28,474 returned from the original \$140,357.11 leaves \$111,883.11. Dividing this by the \$204.60 daily cost results in a 547 day divestment period, or from April 1, 2011, through September 29, 2012. The petitioner reapplied for benefits on December 28, 2012, and her representative seeks eligibility for her beginning on October 1, 2012. Because benefits can begin up to three months before an application, I will find her eligible as she requests. See Wis. Admin. Code, § DHS 103.08(1)

CONCLUSIONS OF LAW

The petitioner is entitled to have her period of ineligibility as a result of divestment reduced to 537 days because her divestment was partially cured.

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 find the petitioner eligible for institutional medical assistance retroactive to October 1, 2012.

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 15th 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 15, 2013.

St. Croix County Department of Human Services
Division of Health Care Access and Accountability
jennifer@oneillelderlaw.com