



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
c/o Atty Douglas Plier
[REDACTED]
[REDACTED]

DECISION

MDV/147776

PRELIMINARY RECITALS

Pursuant to a petition filed February 27, 2013, under Wis. Stat., §49.45(5), to review a decision by the Dodge County Dept. of Human Services to deny Medical Assistance (MA), a hearing was held on July 3, 2013, by telephone. Hearings set for April 4, April 30, and May 29, 2013 were rescheduled at the petitioner's request.

The issue for determination is whether petitioner was eligible for MA except for a divestment as of January 31, 2013.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o Atty. Douglas Plier
318 E. Lake St.
Horicon, WI 53032

Petitioner's Representative:

Atty. Douglas Plier
318 E. Lake St.
Horicon, WI 53032

Respondent:

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

By: Atty. Zev Kianovsky, Kim Anthony
Dodge County Dept. of Human Services
143 E. Center Street
Juneau, WI 53039-1371

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County.
2. Petitioner applied for nursing home MA on January 31, 2013. On the application he reported \$1,800 in non-exempt assets. He also reported that he divested property.

3. The county requested verification of assets, and thus began a long drawn out process of petitioner's representatives attempting to verify a number of transfers and where the money involved in the transfers originated.
4. On February 19, 2013, the county sent petitioner a notice denying MA because assets were over the limit. The assets shown on the notice were a \$17,485 checking account and a \$32,394 trust fund. In actuality those assets had been transferred to petitioner's son on January 31 with exception of part of the checking account.
5. Petitioner appealed the denial. During the pendency of the appeal the county continued to work with petitioner's representative to verify the transfers that occurred in January.
6. As of January 31, 2013, petitioner's only asset was the checking account with a balance of approximately \$1,800. As noted, there also was a substantial divestment that could result in a penalty period of over one year. In addition petitioner turned over some \$76,000 to his son who gave him a promissory note to repay the money in regular payments; the county agrees that the transfer was not a divestment and that the monthly payments will be considered to be income to petitioner along with a return of principal.

DISCUSSION

As a first point, it is undisputed that petitioner currently is ineligible for nursing home MA. Petitioner disputes the notice saying that his assets were over the limit in January. It is his position that assets were under \$2,000 as of January 31, 2013, and that the barrier to eligibility should be a divestment penalty period that starts as of January 31.

When an individual, the individual's spouse, or a person acting on behalf of the individual or his spouse, transfers assets at less than fair market value, the individual is ineligible for MA coverage of nursing facility services. 42 U.S.C. 1396p(c)(1)(A); Wis. Stat. §49.453(2)(a); Wis. Admin. Code §DHS 103.065(4)(a); MA Handbook, Appendix 17.2.1. Divestment does not impact on eligibility for standard medical services such as physician care, medications, and medical equipment (all of which are known as "MA card services" in the parlance). The penalty period is the number of days determined by dividing the value of property divested by the average daily nursing home cost to a private pay patient (currently \$215.48). MA Handbook, App. 17.5. 2.2.

The Handbook, App. 17.5.3.1 describes the start date of a penalty period as follows:

For divestments that occurred on or after January 1, 2009, the penalty period for an applicant for Institutional LTC Medicaid begins on the day the applicant:

- Is institutionalized and
- Has applied for Medicaid and
- Is otherwise eligible for Medicaid

Thus the nursing home resident must apply for MA and be under the asset limit for the penalty period to begin. Petitioner does not dispute that he divested property and that he did so partly to get under the asset limit. However, the intent to get under the asset limit is anticipated by the Handbook drafters, as can be seen in the examples found at Appendix 17.5.3.2. There is no penalty or sanction for the intent other than the divestment penalty period.

It is true that the verification process lasted several months. If this were an application that did not include a divestment, denying the application for failure to verify would be justified. However, the purpose of this application was to determine when the divestment penalty period would begin, and the

Handbook does not penalize an applicant for tardiness in verifying the transfers; the only issue is when the person's assets fell below the limit, not when the person verified that to be the case. In addition, I note that the fair hearing process has always been considered to be an extension of the application process, and thus events that occur during the hearing process can be considered part of the entire eligibility process.

It thus is evident to me that petitioner arranged his affairs so that on January 31, 2013, his non-exempt assets were below \$2,000 due to both divestments, payments for legitimate expenses such as attorney fees, a phone bill, and a payment to the nursing home, and a large transfer into the promissory note. Obviously it would have been much easier for the agency if petitioner's representatives had recorded the transfers in an efficient manner that would not have taken several months to explain and verify, but based on my review the transfers now have been verified.

The county argued in a July 10, 2013 letter that petitioner still has not shown assets to be below \$2,000. It was noted that there appeared to be transfers on January 31, 2013 to a revocable living trust in petitioner's name. However, the receipts clearly were labeled as debits from the trust, and petitioner countered by pointing out again that those transfers were from petitioner to his son. The county also questioned to failure to include the trust's bank statement from January, 2013 showing those withdrawals. I agree that would make the case easier, but at some point we have to trust that Attorney Plier is not complicit in a major fraud and that his presentation of the assets is accurate.

At this point I do not know the total divestment (it appears to be approximately \$90,000), and thus I will remand the matter to the county with instructions to determine the divestment period to begin with the January 31, 2013 actions that reduced the assets below \$2,000. I note that I have absolutely no issue with the county's handling of the application and that I blame the petitioner for the delay in the final result, but the delay turns out to be irrelevant because petitioner would not be eligible for MA at this point anyway due to the divestment.

CONCLUSIONS OF LAW

Petitioner is ineligible for nursing home MA due to a divestment with a penalty period that begins with his non-exempt assets going below \$2,000 as of January 31, 2013.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to determine petitioner's divestment and the penalty period that follows with the start date of January 31, 2013. The county shall do so within 10 days of this decision.

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 July, 2013

\sBrian C. Schneider
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 July 12, 2013.

Dodge County Department of Human Services
Division of Health Care Access and Accountability
dougplierlaw@powerweb.net