



FH  
[REDACTED]

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

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In the Matter of

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

DECISION

MDV/148396

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 27, 2013, under Wis. Stat., §49.45(5), to review a decision by the Langlade County Dept. of Social Services to deny Medical Assistance (MA), a hearing was held on April 30, 2013, by telephone.

The issue for determination is whether a divestment occurred when petitioner sold her home in 2010.

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

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

By: Rhonda Strandberg  
Langlade County Dept. of Social Services  
1225 Langlade Road  
Antigo, WI 54409-2795

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Langlade County.
2. In September, 2010, petitioner and her husband sold their home to friends for \$10,000. The home was assessed at a fair market value of \$43,200. The sale was agreed upon by the parties without the home being placed on the market. The friends who purchased the home regularly purchase ill-conditioned properties and refurbish them for resale or rental.

3. In 2012 the buyers made improvements to the home costing approximately \$11,000.
4. In 2012 the home was reassessed to have a value of \$19,290.
5. Petitioner applied for MA on February 4, 2013. By a notice dated March 4, 2013, the county determined that she was eligible for nursing home MA effective February 1, 2013. As of April 1, 2013, her program as changed to Family Care – Facility. Based upon information gathered during the hearing, her program was changed to Family Care – Home-based effective June 1, 2013.
6. Petitioner sought MA retroactive to January 13, 2013. The county denied MA for that month because it concluded that petitioner divested property when she and her husband sold their home. The county originally used the \$43,200 value for the divestment but changed it to the \$19,290 value. The county found that the divestment period was through March 6, 2013, but nevertheless petitioner was granted eligibility for MA effective February, 2013.

### DISCUSSION

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 within 60 months of applying for MA, 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 (\$215.48 in 2013). MA Handbook, App. 17.5. 2.2. The penalty period begins with the date that the person would begin eligibility for institutional MA. Handbook, App. 17.5.3.1.

An exception to the divestment rule is if the person intended to dispose of the property at fair market value. Handbook, App. 17.4, no. 5. In this case petitioner argues that the home was in poor condition, and that she and her husband were trying to dispose of it as best possible. I am troubled by petitioner's failure to list the property or make other efforts to sell other than to advertise it for sale. It is clear to me that they did not put much thought into the sale price. They obviously knew the assessed value of the home, but nevertheless accepted the first offer given to them by friends. Petitioner testified that the extent of the negotiation with the buyer was her suggestion, "Why don't you buy our house?" during a social visit.

That said, I conclude that petitioner intended to sell the home for her idea of fair market value. That intent is bolstered by the events after the sale. The buyers put \$11,000 into the house in 2012 to replace the roof, some windows, and other cosmetic repairs. The buyers also paid for other unspecified expenses for the home (in the expense list there are a number of unspecified purchases at Menards for the home). Then the city reassessed the home as being worth \$19,290. It certainly can be surmised that the assessed value took the improvements into account.

It would be nice to know what the actual value of the home was in 2010. That petitioner and her husband did not obtain such a value suggests that they at least thought they were selling it for its value. Furthermore, the sale occurred 16 months before petitioner applied for MA, so there is a reasonable suggestion that the couple was not considering MA eligibility when they sold the house. I thus conclude that they intended to dispose of the property for fair market value.

**CONCLUSIONS OF LAW**

Petitioner and her husband did not divest property when they sold their home for less than the assessed value in 2010 because they thought they were getting a reasonable fair market price for the home.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to re-determine petitioner's January, 2013 MA eligibility by rescinding the calculated divestment penalty. The county shall take the action 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 6th day of May, 2013

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\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 May 6, 2013.

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