



FH
[REDACTED]

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

In the Matter of

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

DECISION

MDV/148553

PRELIMINARY RECITALS

Pursuant to a petition filed April 08, 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 May 21, 2013, at Chippewa Falls, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Kelly Goettl

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 entered the nursing home on November 9, 2011, and applied for institutional medical assistance on November 30, 2012.

3. The petitioner and his wife sold their house in July 2009 and then gave \$10,000 to each of their five children. The petitioner was 82 at the time.
4. The county agency found the petitioner ineligible for medical assistance from November 9, 2012, through April 19, 2013 because of divestment.
5. On April 2, 2013, the petitioner requested a hardship waiver from the divestment finding because claims he was being evicted from the nursing home. The county agency denied the request on April 5, 2013, because the petitioner failed to provide any documentation of the eviction proceedings.
6. The nursing home notified the petitioner on April 9, 2013, that he was being discharged from the nursing home for failing to pay his bill.
7. At the time of the hardship request, the petitioner and his wife had \$90,044.45 in assets and owed \$55,890 to the nursing home. They did not pay the facility from November 1, 2012, until the divestment period ended. They had \$144,968 in assets when they stopped making the payments.
8. The petitioner faces no immediate danger to his health if the hardship waiver is denied because he will continue to be cared for.

DISCUSSION

The petitioner entered a nursing home on November 9, 2011, and applied for institutional medical assistance on November 30, 2012. The county agency found him ineligible because of a divestment until April 20, 2012, or 232 days, because he and his wife gave \$10,000 to each of their five children after selling their house in July 2009.

A divestment occurs if an institutionalized person or someone acting on his behalf “disposes of resources at less than fair market value” within the “look back date,” which is the later of when he was considered institutionalized and when he applied for medical assistance. The look back date for assets other trusts had been three years but is being phased in to five years by adding one month to its length each month after January 1, 2012. Wis. Admin. Code, § DHS 103.065(4)(a); Wis. Stat. § 49.453(1)(f). Thus, as indicated in the *Medicaid Eligibility Handbook*, § 17.3.3. the following look back dates apply:

From January 1, 2009 to January 1, 2014 the look back period for non-trust divestments is:

- 36 months until 1/1/12
- 37-59 months between 1/1/12- 12/31/13
- Effective 1/1/14, 60 months

If the person improperly divests his assets, he 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. A divestment does not bar eligibility under the following circumstances found in Wis. Admin. Code, § 103.065(4)(d)2:

- a. The individual intended to dispose of the resource either at fair market value or for other valuable consideration;
- b. The resource was transferred exclusively for some purpose other than to become eligible for MA;
- c. The ownership of the divested property was returned to the individual who originally disposed of it; or

d. The denial or termination of eligibility would work an undue hardship. In this subparagraph, "undue hardship" means that a serious impairment to the institutionalized individual's immediate health status exists.

This matter is somewhat confusing because there was an earlier appeal concerning the petitioner's eligibility. In *DHA Decision No. MGE/146564*, the parties agreed that the grounds on which the agency challenged the petitioner's application had been resolved and that the matter could be dismissed. That decision pointed out, "There apparently is another unresolved divestment that must still be adjudicated, but this will be done in a separate proceeding." The parties in the matter now before me do not challenge that if a divestment did occur, it ended on April 10, 2013. Because the divestment began in November 2012, and medical assistance appeals must be filed within 45 days, it is unclear why the current matter is not late. *See Wis. Admin. Code § HA 3.05(3)*. However, the file contains no notices to the petitioner concerning the divestment, and the agency did not challenge the timeliness of the appeal. Because there is no proof that the petitioner's appeal is late, I will determine this matter on its merits.

The petitioner's daughter contends that a divestment did not occur because her parents did not give the \$50,000 away to become eligible for medical assistance, pointing out that both were still healthy in July 2009. But the petitioner was 82 then, and the evidence indicates that he had been in failing health for some time before entering the nursing home. Moreover, the appeal asserts that the money was given away for "estate planning purposes." The petitioner's assets are not high enough to incur an estate tax, and it is generally rather simple to divide money among one's children. This means that the main purpose of any estate planning the petitioner did would be to pass his money to his children before the government or a nursing home could take it for his medical care. I find that the petitioner gave this money away at least in part to become eventually eligible for medical assistance. Therefore, it is a disqualifying divestment unless he establishes a hardship exemption.

The county agency denied the undue hardship request because the request did not comply with the requirement in the *Medicaid Eligibility Handbook*, § 17.17.5, that those currently institutionalized must include with the hardship request "a copy of the notification sent from the [long-term care] facility which states both the date of involuntary discharge and alternative placement location or other proof that if the hardship waiver is not granted, the individual will be deprived of medical care such that the individual's health or life would be endangered; or deprived of food, clothing, shelter, or other necessities of life." The petitioner sought the hardship request on April 2, 2013, the agency denied it on April 5, 2013, but he never submitted an eviction notice until April 9, 2013. His daughter contends that this is merely a technical violation of the rules. It is not because medical assistance rules require recipients to establish that they qualify for benefits by verifying their evidence rather than merely asserting that something is true. In addition, the April 9 information is still deficient because it has not indicated the alternative placement location or provided other proof that denying the hardship waiver would deprive the petitioner of medical care that would endanger his health or life or deprive him of food, clothing, shelter, or other necessities of life

But even if the inadequate paperwork is overlooked, the petitioner does not qualify for a hardship waiver because he has the ability to stop the only immediate potential threat to his health—eviction from the nursing home—by paying his nursing home bill. He has always had the ability to make these payments. He stopped paying the bill on November 1, 2012, and it reached \$55,890 by the time the divestment ended and medical assistance began making the payments. On November 1, 2012, he and his wife had nearly \$145,000 in assets. Although his bill is substantial, it is much less than the nearly \$90,000 he and his wife still had in assets when the divestment period ended.

At the root of this case is the misunderstanding by the petitioner's daughter that the relevant issue is the effect a divestment has on her mother. Although I understand her concern for her mother, the undue hardship provision covers the "institutionalized individual" and not that person's spouse. It is the

petitioner, being the institutionalized person, who must establish that without the hardship waiver he faces an imminent threat to his health. Beyond what has been already discussed, he has presented no evidence that if he were evicted from his current home he would not find a new one that could provide adequate care. Furthermore, the eviction notice notwithstanding, he has not even established that he will be evicted from his current nursing home: his daughter testified that because medical assistance has begun paying his bills, he can remain there. To obtain the waiver, he must establish by the preponderance of the credible evidence that he faces an imminent and serious threat to his health. He has presented no credible evidence that the divestment penalty poses any threat to his health. Therefore, I must uphold the agency's denial of his request.

CONCLUSIONS OF LAW

1. The county agency correctly determined that the petitioner was ineligible for medical assistance because of a divestment that occurred when he gave \$50,000 to his children.
2. The county agency correctly determined that the petitioner is not entitled to a hardship waiver of the divestment rules because he has not established that the divestment penalty poses an immediate and serious threat to his health.

THEREFORE, it is

ORDERED

The petitioner's appeal is 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 12th day of June, 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 June 12, 2013.

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