



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/149713

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 31, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Walworth County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on July 08, 2013, at Elkhorn, Wisconsin.

The issue for determination is whether the county agency correctly denied the petitioner's February 27, 2013 Institutional MA application (with requested three month backdate), due to divestment of \$21,119 from November 1, 2012 to February 7, 2013 (divestment penalty period).

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Representative:

[REDACTED], daughter and POA  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Carol Wicklund, ES Supervisor  
Walworth County Department of Human Services  
W4051 County Rd NN  
Elkhorn, WI 53121-1006

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a 79 year old resident of Walworth County who was admitted to the [REDACTED] [REDACTED] [REDACTED] during October, 2012.
2. The petitioner had resided with her daughter, [REDACTED] [REDACTED], in her home from about October 28, 2011 until entering the [REDACTED] [REDACTED] [REDACTED].
3. During the period petitioner resided with her daughter's home, petitioner's health declined and she became more disabled. As a result, she required [REDACTED] [REDACTED] care.
4. On February 27, 2013, petitioner's daughter and power of attorney (POA), [REDACTED] [REDACTED], applied at the county agency for Institutional MA-LTC on petitioner's behalf with a requested three month backdate.
5. During the application process, the county agency discovered that during October, 2011 petitioner sold her home (located at [REDACTED]). The October 31, 2011 home sale settlement statement confirmed that petitioner was paid \$100,969.53 for her home.
6. The county agency determined that petitioner had allowable expenses of \$77,033.31 which had been used to remodel [REDACTED] [REDACTED]'s home with the expectation that petitioner would be able to continue to reside with her.
7. The petitioner's representative was unable to provide any reliable evidence that petitioner had made payments to "discharge" any loan/debt to any family member. Petitioner's representative was unable to provide any verification of any loan or debt repayment documents between petitioner and any family member to establish that the \$22,119 (\$100,969 - \$77,033) were not gifts (divestment) by petitioner to her family. See Exhibit 1.
8. The county agency sent an April 18, 2013 notice to the petitioner and her POA stating that petitioner's Institutional MA application was denied for the period of November 1, 2012 to February 7, 2013, due to \$21,119 in divestments of assets resulting from petitioner's home sale proceeds after deducting her allowable expenses. See Exhibit 2.
9. The county agency imposed the divestment penalty period that made petitioner ineligible for MA for that period based upon the following calculation: \$21,119.00 divided by \$215.46 (average daily nursing home rate) equals 98 days of ineligibility. The 98 day divestment period is from November 1, 2012 to February 7, 2013 during which petitioner was eligible for MA card services only (doctor or hospital visits).
10. The petitioner's representative did not submit to the county agency any request for an undue hardship consideration.
11. The county agency sent a notice to the petitioner indicating that petitioner was eligible for Institutional MA benefits as of February 8, 2013.

**DISCUSSION**

A divestment occurs when an institutionalized individual, his spouse, or another person acting on his behalf, transfers assets for less than fair market value, on or after the individual's "look-back date." Wis. Stat. § 49.453(2)(a). "Fair market value" is an estimate of the prevailing price an asset would have had if it had been sold on the open market at the time it was transferred. Medicaid Eligibility Handbook (MEH) § 17.2.1. The "look-back date" is defined as 36 months before, or with respect to trusts, 60 months before, the first date the individual is both institutionalized and an MA applicant. MEH § 17.3.

If such a transfer occurs, the individual is ineligible for MA for nursing home services for a number of months determined by totaling the value of all assets transferred during the look-back period and dividing

that amount by the average monthly cost to a private patient of nursing facility services at the time of the MA application. MEH § 17.5. The ineligibility period begins with the month of the first divesting transfer of assets.

A parallel divestment definition is found at Wis. Admin. Code § HFS 103.065(4), and states in the parts relevant here, as follows:

(4) DIVESTMENT. (a) *Divestment resulting in ineligibility*. An institutionalized individual or someone acting on behalf of that individual who disposes of resources at less than fair market value within 30 months . . . immediately before or at any time after the date the individual applies for MA while institutionalized, shall be determined to have divested. . . (Emphasis added).

During the July 8, 2013 hearing, the county representative established with reliable testimony and evidence that the petitioner gave monetary gifts to her daughter and other family members during the 36 look back period in the total amount of \$21,119. The petitioner's POA alleged that some of those gifts were actually the repayment of loans or debts to family members. However, petitioner's representative admitted that there were no documents whatsoever to confirm that any loan document had been created between petitioner and any family member. Ms. [REDACTED] admitted that the "loans" had been established with a "handshake" between the parties. Ms. [REDACTED] was unable to establish that petitioner received any monetary value in return for those gifts of \$21,119 (transferring assets for less than fair market value is divestment). As a result, those gifts were clearly divestments, as explained above. The petitioner's POA admitted that she did not have any receipts or documents to refute the county agency calculation that the \$21,119 in payments were gifts by petitioner to her family. Accordingly, based upon the above, I conclude that the county agency correctly denied the petitioner's February 27, 2013 Institutional MA application (with requested three month backdate), due to divestment of \$21,119 from November 1, 2012 to February 7, 2013 (divestment penalty period).

### CONCLUSIONS OF LAW

The county agency correctly denied the petitioner's February 27, 2013 Institutional MA application (with requested three month backdate), due to divestment of \$21,119 from November 1, 2012 to February 7, 2013 (divestment penalty period).

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby 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 26th day of August, 2013

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\sGary M. Wolkstein  
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 August 26, 2013.

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