



FH
[REDACTED]

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

In the Matter of

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

DECISION

MGE/149883

PRELIMINARY RECITALS

Pursuant to a petition filed June 10, 2013, under Wis. Stat., §49.45(5), to review a decision by the Grant County Dept. of Social Services to deny Medical Assistance (MA), a hearing was held on July 23, 2013, by telephone.

The issue for determination is whether petitioner's assets were over the MA limit when he applied for MA.

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

Atty. H. Brian Muller
151 West Main Street
P.O. Box 528
Lancaster, WI 53813

Respondent:

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

By: Katie Grinnell
Grant County Dept. of Social Services
P.O. Box 447
Lancaster, WI 53813

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Grant County.
2. An application for nursing home MA was filed on petitioner's behalf in February, 2013. By a notice dated May 1, 2013, the county agency denied the application because assets were over the MA limit.

3. In June, 2002, using his own funds, petitioner created an irrevocable trust with his son and daughter as co-trustees. The trust agreement provided that all trust income was to be paid to petitioner. The trust was funded with a number of certificates of deposits, a [REDACTED] retirement annuity, and a land contract for property sold by petitioner.
4. The land contract was paid in full on January 27, 2011 with a check to the trust in the amount of \$245,711.49. Between the start of the trust and the payoff of the land contract, the buyers paid \$177,906.70 in interest. See Exhibit 7; I added the interest payments beginning with the 4/01/2003 payment through the 04/01/2011 payment.
5. Interest from the trust bank account was under \$100 per year. In 2011 after the land contract payment was deposited interest increased to \$564.65 in 2011 and \$422.50 in 2012.
6. Because payments could be made out of the trust to petitioner, the county budgeted the entire trust balance as an available asset. As of the application date the balance was \$160,425.80 in the bank account plus \$173,627 in the annuity for a total of \$334,052.28.
7. The county also budgeted a vehicle valued at \$5,200, a personal checking account of \$2,823.80, and cash on hand of \$40. The vehicle was sold to an unrelated buyer recently for \$1,200.

DISCUSSION

The MA asset limit for an individual is \$2,000. Wis. Stat., §49.47(4)(b)3g. If assets are above that limit, the person is not eligible for MA. The statute does not allow for outstanding debts to be deducted from assets, nor does it provide any exceptions for unusual situations. In determining the value of a bank account in a given month, the agency does not count income received in that month. MA Handbook, Appendix 16.1.0.

Wis. Stat., §49.454 describes the treatment of trusts where assets of the MA applicant were used to form the trust and the trust was created by the applicant or a person with legal authority to act on the applicant's behalf. See §49.454(1)(a). If the trust is revocable, the corpus of the trust is counted against the MA asset limit. §49.454(2). If the trust is irrevocable, but there are circumstances under which payment could be made for the benefit of the MA applicant, the portion of the trust that could be paid on the applicant's behalf is considered an available resource. §49.454(3)(a).

I note first that the creation of the trust in 2002 is not a barrier to eligibility because it was more than five years prior to the MA application. See Wis. Stat., §49.453(1)(f). However, payments made from the trust both directly to petitioner's children and to petitioner, who then passed the money on to his children, are potentially divestments under §49.453(2)(a).

One issue before me is whether the county correctly determined the entire trust balance as an available asset. The county's conclusion arguably is correct, as I will explain later. However, the primary issue is whether the county correctly determined that petitioner's assets were over the \$2,000 limit. On that issue the county is correct.

The trust document states: "During the lifetime of [petitioner], the trustee shall pay to [petitioner] all of the income." See Exhibit 1, page 2, Article Two, no. (2). Therein lies the problem for petitioner. Over the course of the trust, it has earned approximately \$180,000 in income just from the land contract and the bank account. It is unclear how much income the retirement annuity earned or whether any of the annuity income was available for withdrawal, but petitioner argues that he was entitled to some \$25,000 of annuity income since 2009. Thus we have evidence that petitioner was entitled to at least \$205,000 in income from the trust over its history, and even more if the annuity income prior to 2009 is added in. The evidence before me is that the trust paid out \$152,025 since 2009. There is no record of payments prior to

2009. Thus it is possible that there is over \$50,000 income in the trust balance still available to be paid to petitioner.

Furthermore, it is evident that the trustees were not paying the income to petitioner regularly as the income was received. Thus petitioner is making a leap in saying that payments made out of the trust were only out of income. For practical purposes it appears that the trustees were making trust withdrawals with no regard to whether the money withdrawn was income or principal. Again, if the trustees were following the letter of the trust provision, they would have been paying trust income to petitioner regularly as the income was generated. Instead it appears that they used no method in their withdrawals and treated the trust as a large bank account. If that is the case the county's position that the entire trust was available is defensible.

Furthermore, looking at the known assets, on the date of application petitioner had a bank account with a balance of at least \$2,800 (after excluding monthly income) and a vehicle valued at \$1,200 (using the sale price rather than the blue book value). That means that petitioner's unquestioned assets were over \$4,000 when the county acted on the application.

No matter how you look at it, the county correctly determined that petitioner's assets were over the MA limit. If petitioner reapplies, he will have to show that the trust does not include funds deriving from income earned over the course of the trust, because if it does those funds are available to him. He will also have to show that the trustees did not simply ignore the trust document and pay out money from the principal. If they did, then I would have no trouble finding that the trust in its entirety is available, as I would elevate the trustees' actions in handling the trust over the limiting language of the trust, that is, if the trustees paid principal to petitioner for other reasons, they could just as easily pay principal to petitioner for his care.

Petitioner argues that some \$102,000 divested is a countable asset to be added to his actual assets of \$4,000. See petitioner's June 10, 2013 appeal letter, page 4. That is not the way the process works. The actual assets are counted against the asset limit. Divestments are looked at separately and affect eligibility only after actual assets fall below \$2,000 ("is otherwise eligible for Medicaid"). MA Eligibility Handbook, Appendix 17.5.3.1. In this case actual assets are at minimum \$4,000 and at maximum over \$300,000. The divestment question does not arise until it is determined that actual available assets are below \$2,000.

CONCLUSIONS OF LAW

The county correctly determined that petitioner's available assets were over the MA limit when he applied for nursing home MA in February, 2013.

THEREFORE, it is

ORDERED

That 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 30th day of July, 2013

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 30, 2013.

Grant County Department of Social Services
Division of Health Care Access and Accountability
hbmuller@tds.net