



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MDV/150025

PRELIMINARY RECITALS

Pursuant to a petition filed June 11, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the St. Croix County Department of Human Services in regard to Medical Assistance, a hearing was held on July 22, 2013, at New Richmond, Wisconsin.

The issue for determination is whether the agency correctly determined the date that the petitioner was eligible for medical assistance under a hardship waiver.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Jen Feyereisen

St. Croix County Department of Human Services
1445 N. Fourth Street
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [redacted]) is a resident of St. Croix County.
2. The county agency notified the petitioner on March 15, 2013, that she was ineligible for institutional medical assistance until May 26, 2013, because of a divestment. It sent a revised notice on April 29, 2013, indicating that the "penalty period related to this divestment is from

January 1, 2013, through May 25, 2013.” That notice also stated: “Your undue hardship waiver request must be received by the local agency (shown above) within 20 days of the date of this notice. If your request is approved, the entire penalty period will be waived.” The notice went on to state that requests can be submitted after 20 days but that only a portion of the penalty period would be waived.

3. The petitioner requested a hardship waiver from the divestment penalty period on May 10, 2013. On May 24, 2013, the county agency granted the request, allowing her benefits retroactive to May 1, 2013. She requests benefits retroactive to January 1, 2013.

DISCUSSION

The petitioner has been in a nursing home since 2007 but did not apply for institutional medical assistance until earlier this year, when she sought benefits retroactive to January 1, 2013. On March 15, 2013, the county agency notified her that she was ineligible until May 26, 2013, because she divested assets. On April 29, 2013, it sent a revised notice indicating that the “penalty period related to this divestment is from January 1, 2013, through May 25, 2013.” A divestment occurs if an institutionalized person or someone acting on her behalf “disposes of resources at less than fair market value” after a date ranging from three to five years, depending upon the circumstances. Wis. Admin. Code, § DHS 103.065(4)(a); Wis. Stat. § 49.453(1)(f).

The Department is required by Wis. Stat. § 49.453(8)(a)2 to establish a process that waives the period of ineligibility if it would cause “undue hardship.” The only provisions relating to the procedure for filing a hardship waiver are in *Medicaid Eligibility Handbook*, §§ 17.7.4.1. and 17.7.4.2. The first states that if a “valid request for an undue hardship waiver is received by the local agency within 20 days after the local agency mails out the Divestment Penalty and Undue Hardship Notice ([F-10187](#)), and the request is approved, the effective date of the waiver will be the initial date of the penalty period.” The second indicates that if the request is received after 20 days, the waiver begins when the request is received.

The petitioner filed her request for a hardship waiver on May 10, 2013, which was within 20 days of the second notice. However, because it was not within 20 days of the initial notice, the agency waived the divestment penalty only back to May 1, 2013, rather than January 1, 2013, when it began. I find no authority for its action. Its first notice was defective because it incorrectly stated the length of the period of ineligibility. This means that only the second notice was valid. That notice clearly told her that she had 20 days from April 29, 2013, to file her request, and she did. Moreover, there is no statute or administrative code provision that limits these requests to 20 days. Presumably, the Department’s policy is meant to allow it to process these requests in an orderly manner and avoid having to regather documentation after it assumed a matter was closed. This is not a problem here because the agency had an open and active file when the petitioner made her request. Finally, I note that the agency agreed that a hardship existed because of the money the petitioner owed for her care. Waiving less than a month’s medical costs does almost nothing to alleviate this hardship.

This decision does not determine whether a valid hardship actually existed because the agency conceded that by granting a waiver.

CONCLUSIONS OF LAW

1. The petitioner filed her medical assistance hardship waiver within the time limit allowed by *Eligibility Handbook*, § 17.7.4.1.
2. The petitioner is entitled institutional medical assistance benefits retroactive to January 1, 2013, because she had an undue hardship that justified waiving her divestment penalty period.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it waive the divestment penalty period assessed against the petitioner and find her eligible for institutional medical assistance retroactive to January 1, 2013.

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 27th day of August, 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 August 27, 2013.

St. Croix County Department of Human Services
Division of Health Care Access and Accountability