



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

FCP/150352

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 26, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on July 24, 2013, at Eau Claire, Wisconsin. The record was left open for 31 days at the petitioner's request.

The issue for determination is whether rental real estate owned by the petitioner, and on which her long-time non-marital companion holds a life estate, is an available asset.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

By: Gregory Banchy  
Banchy Law Center, L.L.C.  
4430 Golf Terrace, Suite 145  
Eau Claire, WI 54701

Respondent:

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

By: Sheila Morden

Eau Claire County Department of Human Services  
721 Oxford Avenue  
PO Box 840  
Eau Claire, WI 54702-0840  
Brief by: Keith Zehms, Corporation Counsel.

ADMINISTRATIVE LAW JUDGE:  
 Michael D. O'Brien  
 Division of Hearings and Appeals

### FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.
2. The petitioner applied for various medical assistance programs on May 10, 2013, so that she could receive in-home care required because of her Alzheimer's-related dementia. The county agency denied her application on June 10, 2013, after determining that her assets exceeded the program's limit.
3. The petitioner owns rental property valued at \$120,230. Her long-time live-in male companion quit-claimed it to her in 2004 and retained a life estate.
4. The petitioner has not listed the rental property for sale. She has the legal right to sell her interest in the property.
5. The petitioner is 84 years old. Her companion is 92 years old.

### DISCUSSION

The petitioner has lived with [REDACTED] in a non-marital relationship since the mid-1990s. She is 84 and he is 92. She seeks medical assistance because she requires extensive in-home care to treat her dementia. A single person cannot receive medical assistance if her non-exempt liquid assets exceed \$2,000. Wis. Stat. § 49.47(4)(b)3g.e. In 2004, [REDACTED] quit-claimed a piece of rental property he owned to her but retained a life estate. The sole issue in this matter is whether that property, which is worth \$120,203, is an available asset.

The petitioner contends that it is not. She argues that as the life estate holder, [REDACTED] would not have to allow anyone in to see it, which means that someone would have to buy it unseen. She also points out that because she holds only the remainder interest, whoever bought the property could not take immediate possession of it. To support her view, she submitted an affidavit drafted by her attorney and signed by a local real estate agent asserting that as long as [REDACTED] continued to hold a life estate, the property was unmarketable.

I disagree. First, the assumption that [REDACTED] would refuse to allow anyone to see the property is questionable speculation given his and the petitioner's recent court history. Her guardians moved her out of the house she shared with [REDACTED] and into a place in Minnesota. The court ordered that she be returned to the house she shares with [REDACTED]. Nevertheless, the court did not change the guardians and found that if [REDACTED] refused to cooperate with the petitioner's caregivers and give her guardians unfettered access to their home, "his actions may be used as a basis for [the petitioner's] removal from the home." If [REDACTED] refused to cooperate in the sale of the petitioner's remainder interest, the court likely would view his actions unfavorably, something he, who remains in control of his mental faculties, is surely aware of.

[REDACTED]'s life estate undoubtedly reduces the property's value. But at 92, his life expectancy is less than 3 ½ years. <http://www.ssa.gov/OACT/STATS/table4c6.html>. The Department's life estate tables indicate that the value of a life estate for a 92-year-old person is obtained by multiplying the property's total value by .25771. <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. The remainder interest is obtained by multiplying the total value by .74229. *Id.* These multipliers put the value of the petitioner's remainder interest at over \$89,000. She may not get this much in the open market, but it is implausible that the property does not retain some significant value, even with [REDACTED] holding a life estate. In making

this finding, I give no weight to the statement of the real estate agent because he was not available to answer questions about his underlying assumptions.

The petitioner can sell her share of the property. If she does, she has a legal right to the money from the sale and the legal ability to make the proceeds available for her support and maintenance. The property can be made available in less than 30 days. This means it is an available and countable asset. *See Medicaid Eligibility Handbook*, 16.2.1. She can make the property unavailable by listing it with a real estate agent at a reasonable price. *Medicaid Eligibility Handbook*, §§ 16.2.2. and 16.9. Until then, the property counts toward her asset limit, and she is ineligible for medical assistance.

### **CONCLUSIONS OF LAW**

The rental property owned by the petitioner is an available asset that puts her assets over the medical assistance limit.

**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 27th day of August, 2013

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\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.

Eau Claire County Department of Human Services  
Office of Family Care Expansion