



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/153691

PRELIMINARY RECITALS

Pursuant to a petition filed November 19, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on December 19, 2013, at Waukesha, Wisconsin.

The record was held open to allow the Petitioner to supplement the record. The Petitioner's son submitted Power of Attorney Documentation, a Residential Listing Contract and a Building Inspection Packet/denial of insurance coverage from [redacted] They have been marked as Exhibits 3, 4 and 5 respectively, and they have been entered into the record.

The issues for determination are whether Petitioner's appeal is timely and whether the Washington County Department of Social Services (the agency) correctly determined that the Petitioner was overpaid Medicaid benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



By:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Ken Benedum, Economic Support Specialist
Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner receives health care benefits through Family Care and Institution Long Term Care Medicaid. (Exhibit 2)
3. Petitioner has a community spouse. (Id.)
4. Petitioner's spouse sold her home on May 25, 2012, for \$77,500.00. (Exhibit 2; Exhibit 5)
5. The purchaser of the home was neither a friend nor relative of Petitioner or his family. (Testimony of Petitioner's Son)
6. An inspection of the home that occurred on January 28, 2012 and February 1, 2012, which listed a number of concerns including, but not limited to the exterior grades, the age of the roof, ice dam potential, a cracked vanity, condition of the tub – waste and overflow and the need for grout, the beginnings of corrosion on the galvanized pipes and reduced water pressure at the kitchen faucet. (Exhibit 5; Exhibit 2)
7. The listing contract with [REDACTED] Realty stated a list price of \$74,900 for the home. (Exhibit 4, pg. 2)
8. Petitioner's family received only one other offer to purchase home, but Farmers' Insurance would not extend coverage to the potential purchaser due to the condition of the roof. (Testimony of Petitioner's son; Exhibit 5, pg. 9)
9. In 2012, Milwaukee County valued the home at \$123,100 for property tax purposes. (Exhibit 2, pg. 9)
10. Sometime around August 2013, the agency determined that a divestment occurred. (Exhibit 2)
11. On August 27, 2013, the agency sent Petitioner a notice indicating that it determined that he was overpaid Medical Assistance benefits in the amount of \$14,759.76. The notice did not indicate the period of time in which the overpayment occurred, nor did it state a reason for his alleged ineligibility for benefits. (Exhibit 2, pg. 24)
12. Within a week of the August 27, 2013 notice, Petitioner's spouse submitted a request for fair hearing. She did not hear back so submitted a second request for Fair Hearing that was received by the Division of Hearings and Appeals on November 29, 2013. (Exhibit 1, Testimony of Petitioner's spouse)

DISCUSSIONI. Is Petitioner's Appeal Timely?

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application, the reduction of benefits, or as in this case, the recoupment of an overpayment.

The date of action, in this case, was August 27, 2013. Petitioner's spouse testified that within a week of receiving the overpayment notice, she mailed in a request for fair hearing. Petitioner testified that she didn't hear anything for three months and so, submitted a second request for hearing on November 29, 2013. Given that Petitioner and her son were so well organized that they could submit to me, within a day, extensive documentation concerning the sale of a home that occurred 17 months earlier, I find the

testimony of Petitioner's spouse to be very credible. As such, it is found that Petitioner's appeal was timely filed.

It should be noted that Medicaid Eligibility Handbook (MEH) §22.2.3.2 requires agencies to, "notify the member or the member's representative of the period of ineligibility, the reason for his/her ineligibility, the amounts incorrectly paid and request arrangement of repayment within a specified time." *Emphasis added.*

The notice issued by the agency on August 27, 2013, did not state an overpayment period, nor did it explain the reason for Petitioner's ineligibility. (See Exhibit 2, pgs. 24-26) As such, the notice to Petitioner was defective. The defective notice provides another basis upon which to find Petitioner's appeal timely.

II. Did the Agency Correctly Determine that an Overpayment Occurred?

The administrative rules concerning divestments that occurred after August 9, 1989 are found under Wis. Admin. Code §DHS 103.065 (4), which states, "An institutionalized individual or someone acting on behalf of that individual who disposes of resources at less than fair market value ... shall be determined to have divested. A divestment results in ineligibility for MA for the institutionalized individual..." *Wis. Admin. Code §DHS 103.065 (4)(a) See Also Wis. Stats. §49.453(2); 42 U.S.C. §1396P(c)(1)(A) and (B)*

It is the agency's contention that the sale of Petitioner's home for \$77,500 in May 2012 constituted an unreported divestment, because the county valued the home at \$123,100 for property tax purposes. As such, the agency contends that the Petitioner was not eligible for Medicaid benefits, between the date he was originally found eligible, July 1, 2012 and January 4, 2013.

In order to prove that a divestment occurred, the agency must show among other things, 1) the fair market value of the home and 2) that the home was sold for less than fair market value. Although the county provided an assessment from the county for property tax purposes, there is no evidence that the county was aware of the numerous problems with the home at the time the county completed its assessment.

Because the agency provided no reliable/accurate documentation showing what a similarly situated home would sell for in the open market, i.e. the fair market value, it cannot show that a divestment occurred.

Even if the agency could prove that the home was sold for less than fair market value, the Petitioner would still be eligible for Medicaid, because there is no evidence that his family had any intention of selling the home for less than fair market value:

42 U.S.C. §1396P(c)(2)(C) states that a person who divests assets is ineligible for Medicaid UNLESS, "a satisfactory showing is made to the State (in accordance with regulations promulgated by the Secretary) that

(i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration,

(ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, **or**

(iii) all assets transferred for less than fair market value have been returned to the individual;
or

(D) the State determines, under procedures established by the State (in accordance with standards specified by the Secretary), that the denial of eligibility would work an undue hardship as determined on the basis of criteria established by the Secretary.

Emphasis added

Similarly, Wis. Admin. Code §DHS 103.065 (4)(d), states:

An institutionalized individual who has been determined to have made a prohibited divestment under this section shall be found ineligible for MA as defined under s. DHS 101.03 (95) unless:

1. The transfer of property occurred as the result of a division of resources as part of a divorce or separation action, the loss of a resource due to foreclosure or the repossession of a resource due to failure to meet payments; or
2. It is shown to the satisfaction of the department that one of the following occurred:
 - 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.

Emphasis added

The sale of the home was conducted at arm’s length. That is to say, that the home was sold to someone who was basically a stranger to the Petitioner and his family. A building inspection documents the home’s issues and the record contains a letter from at least one insurance company that refused to insure a potential purchaser, due to the condition of the roof. Petitioner’s son testified credibly that they only received two offers on the home, and the sale at the higher bid fell through because of insurance issues. Finally, the \$74,900 listing price for the home, in the contract with [REDACTED], was \$2,600 less than what the \$77,500 price that the home actually sold for.

Based upon the foregoing facts, it is found that the Petitioner/his family fully intended to sell the home at fair market value. As such, no divestment and no overpayment of benefits occurred.

CONCLUSIONS OF LAW

1. Petitioner’s appeal was timely.
2. The agency incorrectly determined that Petitioner was overpaid Medicaid benefits.

THEREFORE, it is

ORDERED

That the agency rescind the August 27, 2013 Notice and Repayment Agreement for Medical Assistance/BadgerCare/BadgerCare Plus Overpayment and that it cease collection efforts. The agency shall take all administrative steps to complete these tasks within 10 days of this decision.

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, Room 651, 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 Milwaukee,
Wisconsin, this 29th day of January, 2014.

\sMayumi M. Ishii
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 January 29, 2014.

Washington County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability