



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

In the Matter of

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

DECISION

MGE/154179

PRELIMINARY RECITALS

Pursuant to a petition filed December 13, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Polk County Department of Social Services in regard to Medical Assistance, a hearing was held on January 23, 2014, at Balsam Lake, Wisconsin.

The issue for determination is whether the county agency correctly found the petitioner ineligible for medical assistance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

Attorney Jennifer A. O'Neill
900 Crest View Drive Suite 220
Hudson, WI 54016

Respondent:

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

By: No Appearance
Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) resided in a nursing home in Polk County until she died on November 1, 2013.
2. Before entering a nursing home, the petitioner lived on her family farm valued at \$151,900.

3. The petitioner's property was held in trust with her son being the trustee.
4. Acting as trustee, the petitioner's son transferred the property held in trust to himself. This transfer was recorded on November 18, 2013.
5. There is no evidence concerning whether the petitioner's son is disabled.
6. The petitioner applied for medical assistance on September 1, 2013. The county agency denied the application on November 27, 2013.

DISCUSSION

I note initially that the agency did not submit a summary of its action or any relevant documentation. During the time the hearing was scheduled to occur, I twice called the representative it listed but got no answer. Later, I discovered that the agency had notified me less than two hours before the hearing that a different worker would appear. I did not get that message because I had hearings scheduled all morning.

A person cannot receive institutional medical assistance if her assets exceed \$2,000. See Wis. Stat. §§ 49.46(1) and 49.47(4). Generally, a person cannot reach this limit by divesting assets, which occurs if she or someone acting on her behalf "disposes of resources at less than fair market value" within five years of later of when they were institutionalized and applied for medical assistance. Wis. Adm. Code, § DHS 103.065(4)(a); Wis. Stat. § 49.453(1)(f). If the person improperly divests her assets, she is ineligible for institutional medical assistance for the number of months obtained by dividing the amount given away by the statewide average monthly cost to a private pay patient in a nursing home when she applied. Wis. Admin. Code, § DHS 103.065(5)(b). A divestment of homestead property does not bar eligibility if the property is divested to a child "who meets the SSI definition of total and permanent disability or blindness under 42 USC 1382c." Wis. Admin. Code, § DHS 103.065(4)(b)2. All property on a farm is considered homestead property as long as it is not separated from the portion lived on by land owned by someone else. *Medicaid Eligibility Handbook*, 16.8.1.

Until she entered a nursing home, the petitioner lived on a farm that she and her late husband placed in trust in 2006. Her son was the sole trustee. She died on November 21, 2013. On October 23, 2013, her son, acting as trustee, had transferred the property to himself. The county agency denied the petitioner's application for medical assistance. The petitioner's attorney contends that this occurred because of an alleged divestment. She then argued that this was not a disqualifying divestment because the petitioner's son is disabled. Neither he nor anyone else testified on behalf of the petitioner. In addition, the agency's notice of decision, which the petitioner's attorney submitted, indicates that the denial occurred because of lack of verification.

The petitioner has the burden of proving by the preponderance of the evidence that she is entitled to medical assistance. Much of her case consisted of documents that I assume are undisputed. However, her case rests upon her son's being totally disabled. This has to be proved, which it was not. I will not dismiss this matter outright because the agency did not appear and I did not ask the petitioner's attorney to provide proof of this fact. Instead, I will remand this to the county agency with instructions to either approve the request or clarify why it is denying it. The petitioner may file a new appeal if she continues to disagree with the agency's decision. If this matter is heard again, the agency will be expected to submit a summary and relevant documents, including any requests for verification and denial notices, and the petitioner will be expected to present proof of the facts underlying its claim that there was not a disqualifying divestment.

CONCLUSIONS OF LAW

There is insufficient evidence to determine whether the agency correctly denied the application for medical assistance.

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 the county agency shall either approve the petitioner's application or explain in detail why it is being denied. If the petitioner disagrees with this determination, she may file a new appeal.

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 Madison,
Wisconsin, this 3rd day of February, 2014

\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 February 3, 2014.

Polk County Department of Social Services
Division of Health Care Access and Accountability
Attorney Jennifer O'Neill