FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MGE/154182

PRELIMINARY RECITALS

Pursuant to a petition filed December 17, 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 February 18, 2014, by telephone.

The issue for determination is whether the county correctly denied MA due to a trust asset being available.

PARTIES IN INTEREST:

Petitioner:

[redacted]

Petitioner's Representative:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
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. Petitioner applied for nursing home MA on October 17, 2013. His wife lives in the community. By a notice dated November 11, 2013, the county denied the application based on a finding that assets were over the limit.

3. On September 13, 2013, petitioner's wife created an irrevocable family trust. Beneficiaries of the trust were the couple's children. The trust provided that trust assets and income could be paid only to the beneficiaries in the trustee's discretion.

4. On September 20, 2013, petitioner's wife loaned $327,706.98, consisting of the couple's non-real estate assets, to the trust. In return the trust would pay $27,350.35 monthly to petitioner's wife for twelve months. The interest rate on the loan was 0.28% per annum.

5. In 2011 petitioner and his wife sold their family farm to their son on a land contract. The sale price was $240,000. Their son paid $20,000 down, with the remainder to be paid over 15 years in monthly payments of $1,739.75. The interest rate was 5.00% per annum.

6. On September 20, 2013, petitioner and his wife assigned their interest in the land contract to their son, meaning that thereafter their son would be making monthly payments on the contract to himself. Nothing in the assignment suggests that it was made to the family trust.

DISCUSSION

This decision is going to short and unsatisfactory. The county concluded that the trust assets were available because the trustee could distribute assets and income to the beneficiaries. It is wrong for a legal reason and a practical reason. The legal reason is that the beneficiaries are not petitioner or his wife, but the children. Thus the trust assets are not available to petitioner and his wife. The practical reason is that the only trust asset is a promissory note that has specific repayment provisions. The trustee could not distribute funds from the promissory note because such a distribution would result in a default on the note. Essentially the entire loan has to be repaid in one year. Any distribution to beneficiaries would make default inevitable because it would reduce the funds available to repay the note.

The existence of the trust, in fact, is a red herring. The availability of the $327,706 has nothing to do with the trust but with the promissory note. The note could have been made between petitioner's wife and anyone; it just happens to be the trust. I see two issues in the note. Is it valid because it was made with, presumably, marital assets but without petitioner signing the note? Second, if it is valid, does petitioner not have a full interest in the monthly $27,350 payments regardless of the fact that they are paid to his wife? If petitioner has $27,350 per month available to him, he almost certainly would not be eligible for MA. I cannot make those determinations at this point. I do not know the source or sources of the $327,706 or whether petitioner's wife had the authority to loan out the funds without petitioner's cosigning the loan document.

I thus will remand the matter to the county to determine the impact of the promissory note on petitioner's eligibility. In addition, the county needs to determine the impact of the assignment of the land contract. It looks to me like petitioner and his wife have given up their interest in a valuable asset for nothing in return. In other words, it appears to me that they have divested the asset. However, since the county has not reviewed that issue at all, it should do so on remand.

CONCLUSIONS OF LAW

The county denied MA incorrectly based upon a misreading of the availability of trust funds to the petitioner.

THEREFORE, it is **ORDERED**

That the matter be remanded to the county with instructions to re-determine petitioner's eligibility for nursing home MA, specifically whether a promissory note signed by his wife is valid and if so, whether petitioner has an interest in the large monthly payments on the note, and whether the assignment of their interest in a land contract was a divestment by petitioner and his wife. The county shall review the eligibility and inform petitioner of its determination within 10 days of this decision subject to delays needed for verification, if any.

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 28th day of February, 2014

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\sBrian C. Schneider
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 28, 2014.

Grant County Department of Social Services
Division of Health Care Access and Accountability
Attorney W Ryan Zenk