



FH
[REDACTED]

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

In the Matter of

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

DECISION

MDV/155034

PRELIMINARY RECITALS

Pursuant to a petition filed January 27, 2014, 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 February 20, 2014, at New Richmond, Wisconsin.

The issue for determination is whether the county agency correctly denied the petitioner’s application for a hardship waiver of her divestment penalty period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
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 November 20, 2013, that she would be ineligible for medical assistance from September 1, 2013, until December 17, 2013, because she divested \$26,441.
3. The petitioner requested a hardship waiver of this penalty period on November 27, 2013. The county agency denied it on January 10, 2014. She filed this appeal January 27, 2014.
4. The petitioner faces no immediate threat to her health if her request for a hardship waiver is denied because she will continue to be cared for.

DISCUSSION

A divestment occurs if an institutionalized person or someone acting on her behalf “disposes of resources at less than fair market value” within the “look back date,” which is the later of when she was considered institutionalized and when she applied for medical assistance. The look back date for assets other trusts had been three years but is being phased in to five years by adding one month to its length each month after January 1, 2012. Wis. Admin. 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 at the time she applied. Wis. Admin. Code, § DHS 103.065(5)(b). Beginning on January 1, 2009, county agencies were instructed to use the average daily cost of care and determine ineligibility to the day rather than to the month. The daily amount is currently \$243.49 *Medicaid Eligibility Handbook*, § 17.5.2.2. A divestment does not bar eligibility if denying eligibility “would work an undue hardship,” which “means that a serious impairment to the institutionalized individual's immediate health status exists.” Wis. Admin. Code, § 103.065(4)(d)2:

The county agency notified the petitioner on November 20, 2013, that she would be ineligible for medical assistance from September 1, 2013, until December 17, 2013, because she divested assets when her daughter who had been her guardian transferred \$26,441 to herself. Medical assistance appeals must be filed within 45 days. *See* Wis. Admin. Code § HA 3.05(3). Because the petitioner filed this appeal on January 27, 2014, or 68 days after she was notified of the divestment, she cannot appeal that a divestment occurred. However, on November 27, 2013, she filed a request that the agency waive the penalty period because it posed an undue hardship to her. The appeal of this issue is timely because the agency denied it on January 10, 2014.

The agency processed the hardship request on December 27, 2013. An institutionalized person seeking a hardship waiver must submit either (1) a notice from the nursing home stating when she will be involuntarily discharged and the alternative placement location, (2) other proof that denying the hardship waiver will deprive her of medical care of medical care such that her health or life would be endangered, or (3) that she will be deprived of food, clothing, shelter, or other necessities of life. *Medicaid Eligibility Handbook*, § 17.17.5. Because the petitioner did not submit any documentation with the request, the agency requested that she provide proof of a hardship by January 10, 2014. The only documentation sent was a letter from the nursing home indicating that she owed \$10,000. The petitioner must prove by the preponderance of the credible evidence that without the hardship waiver she will face an immediate and serious threat to her health. By the date of the hearing, the divestment period had expired two months earlier. She submitted no evidence that she would be evicted from the nursing home or that she faced any other threat to her health if the request were denied. Another of her daughters, who has taken over as the guardian, testified that the unpaid nursing home bill was the only reason for the request and that it was unfair that the nursing home would not get paid for the services it provided. While I understand her concern regarding paying the nursing home, this is not a concern the law allows to be considered. (It is also one that would disappear if the petitioner’s other daughter returned the money she has taken.) Because it is undisputed that she faces no threat of eviction and no immediate and serious threat to her health if the request is denied, I must uphold the agency’s decision.

CONCLUSIONS OF LAW

The county agency correctly denied the petitioner's request for a hardship waiver from her divestment penalty period because she failed to prove that she faced an immediate and serious threat to her health without the waiver.

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, 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 25th 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 25, 2014.

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