



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

In the Matter of

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

DECISION

MDV/155364

PRELIMINARY RECITALS

Pursuant to a petition filed February 10, 2014, under Wis. Stat., §49.45(5), to review a decision by the Walworth County Dept. of Human Services to deny Medical Assistance (MA), a hearing was held on April 9, 2014, by telephone. A hearing set for March 18, 2014 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner divested property prior to applying for MA.

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: Sandra Cross
Walworth County Dept. of Human Services
W4051 County Rd. NN
Elkhorn, WI 53121-1006

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Walworth County.
2. In August, 2012, petitioner was 64 years old and seemingly in good health. Among his assets at that point was his home with an equity value of approximately \$60,000. Because one of his two daughters had suffered financial setbacks, he agreed to give her \$30,000 to cover her losses. To do so he applied for a second mortgage on the home.

3. After applying for the second mortgage petitioner suffered a stroke in September, 2012. He went through rehab and returned home in approximately one month. No long term care services were prescribed at that point.
4. The loan was finalized on October 17, 2012, and petitioner gifted the \$30,000 to his daughter. She immediately paid off debts in that amount.
5. Petitioner suffered a second, worse stroke soon after. He was admitted to a nursing facility on November 2, 2012.
6. An application for nursing home MA was filed on October 31, 2013. Petitioner was found eligible for MA beginning December 17, 2013. He was denied for July and August, 2013, and October through December 16, 2013 because the county determined that he divested \$30,000 when he gifted the money to his daughter in October, 2012.
7. Petitioner also was denied for September, 2013 due to assets being over the limit. His daughter allowed his monthly social security payments to accrue so that by the end of September petitioner's bank account was over \$2,000 excluding that month's social security deposit. The account was reduced below \$2,000 in October by paying money to the nursing home.

DISCUSSION

When an individual, the individual's spouse, or a person acting on behalf of the individual or his spouse, transfers assets at less than fair market value, the individual is ineligible for MA coverage of nursing facility services. 42 U.S.C. 1396p(c)(1)(A); Wis. Stat. §49.453(2)(a); Wis. Adm. Code §DHS 103.065(4)(a); MA Handbook, Appendix 17.2.1. Divestment does not impact on eligibility for standard medical services such as physician care, medications, and medical equipment (all of which are known as "MA card services" in the parlance). The penalty period is the number of days determined by dividing the value of property divested by the average daily nursing home cost to a private pay patient (\$243.49 in 2013). MA Handbook, App. 17.5.2.2.

There is no question that petitioner gifted the money to his daughter, so the issue is whether the gift met an exception to the rule. Specifically, it is argued that petitioner did not intend to give the money with the intent of receiving MA. Under the law divestment is not a barrier to eligibility if the property was transferred "exclusively for some purpose other than to become eligible for MA." Wis. Admin. Code, §DHS 103.065(4)(d)2.b. The MA Handbook, App. 17.4, provides guidelines for determining whether a transfer was for reasons other than MA eligibility. Any of these could be a basis for such a finding:

1. The person made financial arrangements for potential long term care that would cover a five-year period.
2. There was no expectation of long term care being needed for the next five years, given the person's age and health.
3. The person had a pattern of similar gifts in the past.
4. The transfer is to a dependent relative living with the person.

The agency must deal with each transfer on a case-by-case basis; there may be a finding of no intent even if the circumstances do not meet the above four situations precisely.

Clearly petitioner did not have financial arrangements, and he did not have a pattern of similar gifts. His daughter was neither a dependent nor living with him. The problem with petitioner's appeal lies in the expectation of long term care. If petitioner had no health crisis before the gift occurred, it would be reasonable to consider the gift to be made for reasons other than MA eligibility. However, at the time of the gift, petitioner had just suffered a stroke. Even though he recovered well, it is beyond belief that the

potential for long term care was not within his and the family's thoughts. He could have cancelled the loan process at any time after the first stroke, but he went ahead with it knowing that his long term health was compromised. I, therefore, have to agree with the county's determination that the divestment occurred and that the penalty had to be imposed.

I note that there is a procedure for requesting a hardship waiver. Such a waiver request would go through the county agency.

Finally, with regard to the determination that assets were over the limit in September, 2013, the Division of Hearings and Appeals cannot make an exception to the limit. The MA asset limit for an individual is \$2,000. Wis. Stat., §49.47(4)(b)3g. If assets are above that limit, the person is not eligible for MA. The statute does not allow for outstanding debts to be deducted from assets, nor does it provide any exceptions for unusual situations. Thus although the account balance rose due to a mistake, I cannot order the limit to be ignored.

CONCLUSIONS OF LAW

1. Petitioner divested \$30,000 in October, 2012 by gifting it to his daughter, and the gift does not meet the criteria for being considered exclusively for reasons other than MA eligibility.
2. Petitioner's assets were over the MA limit in September, 2013.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 16th day of April, 2014

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 16, 2014.

Walworth County Department of Human Services
Division of Health Care Access and Accountability