FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]
c/o [redacted]
[redacted]
[redacted]

DECISION

MDV/158538

PRELIMINARY RECITALS

Pursuant to a petition filed June 25, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance, a hearing was held on August 11, 2014, at Waupaca, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]
c/o [redacted]
[redacted]
[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Pamela Kolb
Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Waupaca County.
2. In July and October, 2012, petitioner was 86 years old and in good health. Because her two children had suffered financial setbacks involving bankruptcy and unemployment, she made gifts

to her daughters in July and October, 2012. She also gifted monies to her grandson to assist with his college tuition.

3. At the time of the gifting to her daughters and grandson, petitioner was living independently in her own home. She participated in social activities in her community, and cooked, cleaned and did laundry independently. Exhibit 4.

4. In February, 2014, petitioner was admitted to Pine Manor Healthcare Center subsequent to suffering a stroke.

5. An application for nursing home MA was filed on March 3, 2014. The respondent found petitioner found eligible for MA beginning March 1, 2014, but a penalty period was put into place from the date of eligibility through November 12, 2014, based upon a determination that petitioner's gifting in 2012 constituted a divestment. Exhibit 3.

6. Petitioner was denied for backdated coverage for February 13, 2014 through February 28, 2014, due to assets exceeding program limits. Id.

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). MA Handbook, App. 17.5.2.2.

There is no question that petitioner gifted the money to her daughters and grandson, so the issue is whether the gifts 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.

There is no evidence that petitioner had financial arrangements for long term care, and there was no showing of a pattern of similar gifts. Her daughters were neither dependents nor living with her. However, I find it notable that petitioner had no health crisis before the gifts occurred, and therefore it would be reasonable to consider the gifts to be made for reasons other than MA eligibility. While her age

at the time of the gifts could raise suspicion, the fact that she was living independently and was active in her community demonstrates that the 2012 gifting was not accomplished with any intent to receive MA.

Finally, with regard to the determination that assets were over the limit in February, 2014, the petitioner has not established any error on that determination by the respondent. As such, I conclude that the petitioner's MA eligibility commenced on March 1, 2014, and that petitioner's 2012 gifting was not a divestment.

CONCLUSIONS OF LAW

1. Petitioner's 2012 gifts to her two daughters and to her grandson were not a divestment, as the gifting was not pursued with intent to achieve MA eligibility.
2. Petitioner's assets were over the MA limit in February, 2014.

THEREFORE, it is **ORDERED**

That this matter shall be remanded to the respondent to (1) find the petitioner eligible for MA effective March 1, 2014, and (2) rescind the penalty period identified in the respondent's Notice of Decision dated July 3, 2014. All actions required by this Order shall be completed within 10 days following issuance of this Decision.

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 11th day of September, 2014.

\sPeter McCombs
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 September 11, 2014.

Waupaca County Department of Social Services
Division of Health Care Access and Accountability