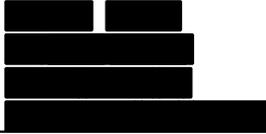




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MDV/158656

PRELIMINARY RECITALS

Pursuant to a petition filed June 30, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Chippewa County Department of Human Services in regard to Medical Assistance, a hearing was held on July 15, 2014, at Chippewa Falls, Wisconsin.

There is no issue for determination because the petitioner has received all the benefits he seeks and the matter is moot.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Jessica Hughes

Chippewa County Department of Human Services
711 N. Bridge Street
Chippewa Falls, WI 54729-1877

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [redacted]) is a resident of Chippewa County.
2. The county agency initially denied the petitioner's request for institutional medical assistance because it determined that he reached the program's asset limit by divesting funds. On July 10,

2014, it granted his request for a hardship waiver and found him eligible retroactive to the date he went into the nursing home.

DISCUSSION

A person cannot receive medical assistance if his assets exceed \$2,000. Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. §§ 49.46(1) and 49.47(4). He cannot reach this limit by divesting assets which occurs if he or someone acting on his behalf “disposes of resources at less than fair market value” within the “look back date.” The look back date is five years before the latter of when he was considered institutionalized and when he applied for medical assistance. Wis. Stat. § 49.453(1)(f). A divestment does not bar eligibility if it would cause an undue hardship. Wis. Admin. Code, § 103.065(4)(d)2.d.

The county agency initially determined that he divested a significant amount of money by paying a relative for his services without having a valid contract, giving money away to charity and relatives, and not collecting the full amount owed to him from the sale of a vehicle. However, he filed a hardship request, and the county agency granted it, finding him eligible retroactive to the date he entered the nursing home.

Although the petitioner has received all the benefits he is entitled to, his power of attorney went through with the hearing because she believes that the Division of Hearings and Appeals should find that the agency’s initial determination was wrong. What she seeks is an advisory opinion that will guide future decisions in which the petitioner probably will not be a party, but the Division does not issue advisory opinions. Rather it determines whether a person is receiving all of the benefits he is entitled to. If he is, the matter is moot and will be dismissed. The petitioner’s representative concedes that the petitioner has received all the benefits he is entitled to and does not seek any further benefits. His matter is moot and must be dismissed.

CONCLUSIONS OF LAW

There is no issue for determination because the petitioner has received all of the benefits he sought.

THEREFORE, it is

ORDERED

The petitioner's appeal is 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 July, 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 July 16, 2014.

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