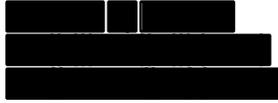




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MDV/158668

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 Dane County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on August 19, 2014, at Madison, Wisconsin.

The issue for determination is whether the county agency correctly determined that the petitioner was subject to an 11-day divestment penalty period (2/21/14 – 3/4/14).

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: Jeremiah Cook, Lead ES Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Dane County.

2. The petitioner has an MA Home/Community-Based Waiver case. She began receiving MA Waiver benefits on February 21, 2014. MA HCBW cases are subject to the same divestment rules as regular Long-Term Care/Institutional MA cases.
3. After the case opened, the county agency requested asset verification on March 19, April 14, and April 25, 2014. In particular, the agency was concerned about the disposition of deposits (tax refunds) totaling approximately \$12,000 into the petitioner's savings account. From that [REDACTED] savings account, withdrawals of \$5,000, \$2,000, and \$4,000 were made on February 7, 2014.
4. The petitioner supplied some verification on April 30. The county agency was still not completely satisfied with the petitioner's verification of the expenditure of the \$11,000 in withdrawals made on February 7. It concluded that \$2,780 out of the \$11,000 was unaccounted for, and determined that an 11-day divestment penalty period (\$2,780 divided by \$243.49 nursing home daily rate) would be imposed for the February 21 through March 4, 2014 period.
5. The county agency issued written notice to the petitioner advising of the penalty period on May 14, 2014. That notice did not advise the petitioner of the time limit for filing a fair hearing request to contest the divestment determination.
6. The petitioner transferred \$1,000 to a different savings account in her name at [REDACTED], and \$1,000 to a checking account in her name at [REDACTED], on February 7, 2014. That \$2,000 remained in the new [REDACTED] accounts, and was not divested as of March 31, 2014.
7. The petitioner transferred \$8,200.00 to a checking account in her name at [REDACTED] Bank on February 7, 2014. That transfer was not a divestment, as she retained control of her asset.
8. From February 7 through March 7, 2014, the petitioner incurred debits to the [REDACTED] Bank account totaling \$8,920. Of that amount \$7,810 was for identifiable purchases or loan repayments. Her \$704 monthly Social Security check is deposited into the [REDACTED] account. The February check was largely consumed by her negative balance and incurred overdraft fees.
9. The petitioner borrowed money from several "payday" and title lenders prior to receiving her tax refunds. She made the following pertinent cash repayments:
  - \$200 to Title Loan on 2/7/2014
  - \$250 to Security Finance on 2/18/2014
  - \$130 to Title Loan on 2/24/2014
 She also paid \$350 in cash to A+ Storage Sun Prairie on 2/8/2014.

### DISCUSSION

The non-exempt asset limit for a single person applying for/receiving Institutional MA or Family Care is \$2,000. For a married couple with one non-institutionalized member, the asset limit ranges from \$50,000 to \$117,240. A person cannot give their assets away to get under the asset limit.

A divestment is a transfer of assets for less than fair market value. Sec. 49.453(2), Wis. Stats.; *MA Eligibility Handbook, (MEH)*, 17.2.1. A divestment or divestments made after December 31, 2008, and within 60 months before an application/review for institutional MA, may cause ineligibility for that type of Wisconsin MA. Sec. 49.453(1)(f), Stats.; *MEH*, 17.3. The ineligibility is only for nursing home care; divestment does not impact on eligibility for other medical services such as medical care, medications, and medical equipment (all of which are known as "MA card services" in the parlance). The penalty period is specified in sec. 49.453(3), Stats., to be the number of months determined by dividing the value of property divested by the average monthly cost of nursing facility services. *MEH*, 17.5, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

In this case, the agency maintains that the petitioner divested \$2,780 in February and March, 2014. The worker who took the action was unavailable on the date of hearing, so her arithmetic in arriving at this figure is unknown. Clearly, she questioned some portion of the \$8,920 in debits from the [REDACTED] account in February and March, 2014.

The petitioner denies any divestment of funds. She testified that her finances were a mess in the winter of 2014, and that she took out various “payday” and title loans to stay afloat until her tax refund checks arrived in early February 2014. For example, her March debits include payments to Cashnet, a quick loan lender. *See*, <https://www.cashnetusa.com/>.

As mentioned above, there was \$1,110 (\$8,920 - \$7,810 identifiable) in questionable debits from the [REDACTED] account in February and March. The petitioner also received a \$704 Social Security check for March, so \$1,814 must be accounted for. At hearing, the petitioner produced cash payment receipts for \$930.00, as listed in Finding #9. On March 7, the petitioner’s [REDACTED] account had an ending balance of \$701.81, which should also be subtracted. The end result is a divested amount of **\$182.19** (\$1,814 – 930.00 – 701.81).

### CONCLUSIONS OF LAW

1. The petitioner divested \$182.19 for MA Waiver purposes.
2. The county incorrectly determined the amount of the petitioner’s divestment, and therefore the length of her divestment penalty period.

**THEREFORE, it is**

**ORDERED**

That the petition is remanded to the county agency with instructions to redetermine the petitioner’s divestment penalty period, based on a divested amount of \$182.19. This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition 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 25th day of August, 2014

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\sNancy J. Gagnon  
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 August 25, 2014.

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