



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MDV/159143

PRELIMINARY RECITALS

Pursuant to a petition filed July 21, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on September 11, 2014, at Waukesha, Wisconsin.

The issue for determination is whether Waukesha County Health and Human Services (the agency) correctly determined that the Petitioner divested assets when she purchased a life insurance funded burial agreement/contract for her daughter.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Michael Kusch, Economic Support Specialist
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. On December 30, 2013, Petitioner's money was used to purchase a Funded Funeral Agreement for Petitioner's daughter. This agreement was funded by life insurance. The total value of goods and services under the agreement was \$4,425.00. (Exhibit 3)
3. On June 6, 2014, the agency sent the Petitioner and her authorized representative a notice indicating that she would not be able to enroll in Medicaid for the Elderly, Blind or Disabled, because of a divestment valued at \$4,323 and that the penalty period would be from May 1, 2014 to May 17, 2014. (Exhibit 4)
4. The divestment referred to in the notice was the purchase of the life insurance burial agreement/contract that Petitioner purchased for her daughter on December 30, 2013. (Testimony of Mr. Kusch)
5. On June 18, 2014, the Funded Funeral Agreement for Petitioner's daughter was amended to change the goods and services involved. This was still funded by life insurance. The total value of goods and services under the agreement was \$4,425.00. (Exhibit 5)
6. Kristen Seaberg is employed by Prosser Kleczka Funeral homes and is the liaison between Prosser Kleczka Funeral Homes and National Guardian Life Insurance. Ms. Seaberg wrote up the Funded Funeral Agreements in December 2013 and June 2014. (Testimony of Ms. Seaberg)
7. The Petitioner's daughter and Ms. Seaberg made the amendments to the goods and services in the Funded Funeral Agreements, based upon information they received from the agency. (Testimony of.)
8. On July 7, 2014, the agency sent the Petitioner a notice indicating that money used to create a burial trust for the Petitioner's daughter was considered a divestment. (Exhibit 6)
9. The petitioner's authorized representative/daughter submitted a request for fair hearing that was received by the Division of Hearings and Appeals on July 21, 2013. (Exhibit 1)

DISCUSSION

At the hearing, it was apparent that there was confusion between what is considered an available asset versus what constitutes a divestment.

An available asset is what a Medicaid applicant owns that can be sold, transferred or disposed of within 30 days; the applicant must also have the legal right and ability to make the money, from the sale, transfer, disposal of the item, available for support and maintenance. *Medicaid Eligibility Handbook §16.2.1*

A divestment occurs when the applicant disposes of an asset/resource for less than fair market value. *See* the administrative rule concerning divestments that occurred after August 9, 1989, under Wis. Admin. Code §DHS 103.065 (4), which states, "An institutionalized individual or someone acting on behalf of that individual who disposes of resources at less than fair market value ... shall be determined to have divested. A divestment results in ineligibility for MA for the institutionalized individual..." *Wis. Admin. Code §DHS 103.065 (4)(a); See Also Wis. Stats. §49.453(2); 42 U.S.C. §1396P(c)(1)(A) and (B)*

The "Look Back" period for transfers/divestments made after February 8, 2006 is 60 months. *Wis. Stats. §49.453(1)(f); 42 U.S.C. §1396P(c)(1)(B)*

The divested asset at issue is the sum of Petitioner's money that was used to purchase the life insurance, funded burial agreement/contract for Petitioner's daughter. This would not be unlike a sum of Petitioner's money being used to purchase a car for her daughter.

When a satisfactory showing is made to the State agency that the assets were transferred for a purpose other than to qualify for medical assistance, the transfer is not considered a divestment. *42 U.S.C. §1396P(c)(2)(C)(ii); See also MEH §17.4*

At the hearing, the agency agreed that when Petitioner initially purchased the life insurance funded burial agreement/contract for her daughter in December 2013, she did not act with the sole purpose of using up her assets in order to become Medicaid eligible. Thus, per *Medicaid Eligibility Handbook §17.4*, the gift Petitioner gave her daughter, by purchasing/creating an life insurance funded burial agreement was not a divestment and the agency erred by considering it one.

The agency contended that even if the December 2013 purchase of the life insurance burial contract was not a divestment, the June 2014 alteration of the burial contract constituted a divestment. However, there is no indication that there was any additional transfer of money from the Petitioner to the funeral home/insurance company on behalf of her daughter when the new agreement was executed. Accordingly, there is no evidence that a divestment occurred in June 2014.

CONCLUSIONS OF LAW

The agency incorrectly determined that Petitioner divested money that was used to purchase a life insurance funded burial agreement/contract for her daughter in December 2013.

THEREFORE, it is

ORDERED

That the agency certify the Petitioner as Medicaid eligible effective May 1, 2014, if she is otherwise qualified. The agency shall take all administrative steps necessary to complete this task within ten days of this decision.

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).

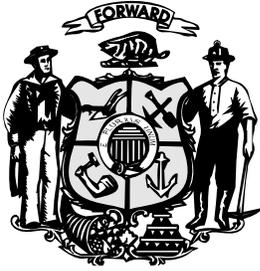
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson

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 Milwaukee,
Wisconsin, this 25th day of September, 2014.

\sMayumi M. Ishii
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 September 25, 2014.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability