



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/158022

PRELIMINARY RECITALS

Pursuant to a petition filed May 30, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Fond Du Lac County Department of Social Services in regard to Medical Assistance, a telephone hearing was held on December 16, 2014, at Fond Du Lac, Wisconsin. A hearing originally scheduled for July 14, 2014, was rescheduled multiple times at the request of petitioner and respondent as the parties attempted to resolve the issue in lieu of hearing. The record was held open for ten days post-hearing, and both petitioner and respondent submitted additional information which was included in the record.

The issue for determination is whether the respondent correctly determined petitioner's Medical Assistance eligibility.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney John V. Kitzke
101 Falls Road
Suite 602
Grafton, WI 53024

Respondent:

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

By: Sandra Thern

Fond Du Lac County Department of Social Services
50 N Portland St
Fond Du Lac, WI 54935

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County.
2. The petitioner presently resides in a nursing home. Petitioner has received medical assistance in paying the costs of his nursing home care.
3. Petitioner's wife passed away on or about March 25, 2014; her will specified that petitioner was the sole beneficiary of her estate.
4. By notice dated April 18, 2014, the respondent sought verification of petitioner's assets. See, Exhibit R-5.
5. On April 28, 2014, the respondent notified petitioner that his Medical Assistance (Nursing Home Long Term Care) would end as of June 1, 2014, due to assets in excess of program limits. That notice counted petitioner's home among his assets. *Id.*
6. By notices dated June 6, 2014, and June 17, 2014, the respondent requested verification of petitioner's assets and any of petitioner's wife's assets that were transferred to petitioner. *Id.*
7. Petitioner's wife and petitioner's son held a joint bank account prior to petitioner's wife's death. Petitioner's son continued to utilize this joint account to pay petitioner's bills following the death of petitioner's wife, citing convenience regarding automatic debits.
8. The respondent did not request that petitioner add his name to the bank account referenced at Finding of Fact no. 7.
9. Petitioner's son, who is also his POA, transferred petitioner's home from a revocable trust to the [REDACTED] [REDACTED], and subsequently facilitated the sale of the home to a third party on August 27, 2014. Proceeds from the sale of the home were retained by the [REDACTED]. See, Exhibit P-5.
10. [REDACTED] [REDACTED] is registered with the State of Wisconsin, and was created to operate a real estate investment business. Petitioner signed the Partnership Agreement, which provides for monthly payments to the petitioner. The [REDACTED] has retained legal counsel and an accountant, and a business plan has been created. *Id.*
11. On June 27, 2014, respondent sent petitioner notice that his February 5, 2014, Medical Assistance application was denied due to failure to supply requested verification and because his assets exceeded program limits. See, Exhibit R-5.

DISCUSSION

Following the filing of the request for hearing on May 30, 2014, the parties attempted to resolve this matter over a period of approximately 7 months. As such, petitioner's case was updated numerous times, and multiple notices were issued post-filing. This served to unfortunately muddy the waters, and prehearing resolution was not successful. At its core, the issue here is whether the respondent has established that it correctly determined that petitioner did not qualify for Medical Assistance enrollment as of June 1, 2014. The respondent contends that petitioner's countable assets exceeded program limits, and that the petitioner did not comply with verification requests. The petitioner argues that he has provided the respondent with everything requested, despite duplicative and confusing notices, and further argues that his assets did not exceed program limits.

I. VERIFICATION

An applicant for MA or a representative acting on the applicant's behalf is responsible for providing the agency with full, correct, and truthful information. Wis. Admin. Code §DHS 102.01(6). **Income and**

assets must be verified. §DHS 102.03(3) (a) and (h). **MA shall be denied when the applicant is able to produce the required verification but fails to do so.** §DHS 102.03(1). (Emphasis added). If the applicant is unable to produce the verification, the agency must assist her/him. Id. An application must be processed within 30 days of its filing date. Wis. Admin. Code §DHS 102.04(1); §DHS 104.01(10). If there is a delay in securing information, the agency must notify the applicant of the delay and the reason for the delay. Wis. Admin. Code §DHS 102.04(1).

The respondent interprets those requirements in its Medicaid Eligibility Handbook (MEH), Chapter 20. Asset and income verification is mandatory. MEH § 20.3.1. The respondent is to assist the applicant/member in obtaining verification if he has difficulty in obtaining it. MEH § 20.3.8. The respondent is further instructed:

Do not deny eligibility if reasonable attempts to verify the income have been made. Use the best information available to process the application or change timely when the following two conditions exist:

1. The applicant/member does not have the power to produce verification, and
2. Information is not obtainable timely even with your assistance. In this situation, continue to attempt to obtain the verification. Once the verification is received, benefits may need to be adjusted based on the verified information.

MEH § 20.3.8.

Testimony at hearing by petitioner's son indicated a great deal of confusion regarding the verification requests. The respondent concurred that its notices are very confusing, and added that every time the petitioner's case is updated, automatic notices are generated.

The respondent argues that the petitioner failed to verify the assets he received from his wife after her death. Specifically, the respondent pointed to its Notice of Proof and Information Needed, dated June 17, 2014, which requested, in part, that petitioner provide verification of any asset received from his deceased wife. See, Exhibit R-5. The petitioner's son testified that he believes that he has provided the respondent with everything that has been requested, and noted that he has provided account information regarding the bank account previously held jointly with his mother, including the account balance and an itemization of where the account funds were spent. The provision of this information was not contested by the respondent. However, the respondent argued at hearing that the petitioner had an affirmative duty to place this bank account in his name, and that failure to do so constituted a divestment. The petitioner countered that he was never told prior to the hearing that he had to do that. When requested to provide a basis for its assertion that the name on the bank account needed to be changed, the respondent cited to the Medicaid Eligibility Handbook, which provides that:

2. It is also divestment if a person takes an action to avoid receiving income or assets s/he is entitled to. Actions which would cause income or assets not to be received include:

...

- b. Disclaiming an inheritance. ...
- f. Refusing to take action to claim the statutorily required portion of a deceased spouse's or parent's estate. Count the action as a divestment only if:
 - The value of the abandoned portion is clearly identified, and
 - There is certainty that a legal claim action will be successful.

MEH, §17.2.1.

Petitioner has not disclaimed an inheritance, nor has the respondent demonstrated that the petitioner has refused to take any action to claim his portion of his wife's estate. The petitioner's son testified that the joint bank account proceeds are used exclusively for petitioner. I note that the June 6, 2014, and June 17, 2014 notices both request verifications of bank accounts, including assets received from petitioner's wife's estate; none of the notices require the re-naming of the account. The respondent has not provided any evidence that the respondent refused to take any action. Based on the testimony and evidence received, the respondent has failed to establish that it provided adequate notice of the verification required and/or that the petitioner failed to provide the verifications requested.

II. ASSETS EXCEEDING PROGRAM LIMITS

The respondent also asserted in its June 27, 2014, notice that petitioner's denial was due to assets in excess of program limits. That notice identified counted assets in the amount of \$8,752.15. The notice did not provide any further detail regarding what assets, exactly, constituted the counted assets. I also note that the notice indicated that petitioner's gross income exceeded the gross income limit; exceeding this limit was not cited as a reason for the denial.

A person cannot receive institutional medical assistance if his assets exceed \$2,000. See Wis. Stat. §§ 49.46(1) and 49.47(4). Generally, a person 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 five years or later of when he was institutionalized and applied for medical assistance. Wis. Admin. Code, § DHS 103.065(4)(a); Wis. Stat. § 49.453(1)(f).

At hearing the issue regarding the proceeds from the sale of petitioner's home was identified by the respondent as a potential countable asset. However, petitioner's representative and petitioner's son testified that petitioner's home was placed into a [REDACTED] following the death of his wife. The name of the [REDACTED] is [REDACTED]. The [REDACTED] sold the house to a third party, and the proceeds were retained by the [REDACTED]. The [REDACTED] is registered with the State of Wisconsin, and was created to operate a real estate investment business. Petitioner signed the Partnership agreement, which provides for monthly payments to the petitioner. The [REDACTED] has retained legal counsel and an accountant, and a business plan has been created.

Petitioner appears to have received fair market value for the sale of his home. The respondent has not argued to the contrary. Instead, the respondent argues that placing the proceeds into a business entity does not shield the proceeds from counting. Specifically, a representative of the respondent wrote in a November, 2014, email:

In order for business assets to be exempt, the business must be currently operating for the support of the member. I don't see any indication in the case you sent that there is any business activity. As far as I can tell, they member created an [REDACTED], and use the [REDACTED] as the holder of an account. This is not a business. If later the member purports to be engaged in some actual business activity, we would have to assess for FMV.

Exhibit R-14.

The record in this matter does not sustain the conclusion that the business is not currently operating. As noted previously, the petitioner has established that the [REDACTED] is an operating business. He noted that the business has yet to make any real estate investments as it is awaiting the decision in the instant matter. This seems to me to be prudent, and I also note that the business has established a business plan, and has been compensating the petitioner, as agreed upon by the Partnership Agreement. To the extent that it can, the business is presently operating. I find that the [REDACTED] is a business, and that the respondent has incorrectly determined that it is not. As such, the business assets are exempt.

I further conclude that the respondent has not established exactly what assets were counted or should have been counted when eligibility was determined in June, 2014. As such, I conclude that the respondent has failed to establish that it correctly determined that petitioner's assets exceeded the counted asset limit at the time of the June, 2014, denial.

CONCLUSIONS OF LAW

1. The respondent has failed to establish that it provided adequate notice of the verification required and/or that the petitioner failed to provide the verifications requested.
2. ██████████ is a business entity currently operating for the support of the petitioner, and therefore the business assets are exempt.
3. The respondent has failed to establish that it correctly determined that petitioner's assets exceeded the counted asset limit at the time of the June, 2014, denial.

THEREFORE, it is

ORDERED

That this matter is remanded to the respondent with instructions to rescind the termination of petitioner's MA enrollment effective June 1, 2014. This action 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 22nd day of January, 2015.

\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 January 22, 2015.

Fond Du Lac County Department of Social Services
Division of Health Care Access and Accountability
Attorney John Kitzke