



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
[Redacted]
[Redacted]

DECISION

MLL/158024

PRELIMINARY RECITALS

Pursuant to a petition filed May 30, 2014, under 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. The hearing was originally scheduled for July 14, 2014. Petitioner and respondent requested numerous adjournments while attempting to resolve this matter, which were granted 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 seeks to impose a lien on the petitioner's home.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
[Redacted]
[Redacted]

Petitioner's Representative:

[Redacted]
[Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: [Redacted]

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 # Redact) 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 home was sold to a third party on August 27, 2014. See, Exhibit P-8.
4. The county agency seeks a lien against the petitioner's home to allow it to recover the costs of medical assistance. See, Exhibit P-7.

## DISCUSSION

The Department can obtain a lien against a medical assistance recipient's home "if the recipient resides in a nursing home...and cannot reasonably be expected to be discharged..." Wis. Stat. § 49.496(2)(b). For purposes of this statutory section, "Home" means property in which a person has an ownership interest consisting of the person's dwelling and the land used and operated in connection with the dwelling. Wis. Stat. § 49.496(1)(b). The petitioner's representative objects to the lien because he contends that the petitioner no longer owns the home in question, and therefore the noticed lien action is moot.

The respondent testified that it is simply following the procedure proscribed by the Medicaid Eligibility Handbook (MEH), which states:

DHS will not file a lien on:

Non-home property.

Homestead property sold by land contract.

Property outside Wisconsin (See 22.1.4.2 Out of State Property ).

A mobile home or the land it sits on when the member does not own the land.

DHS may file a lien on:

A home and all property used and operated in connection with that home.

A mobile home and the land it sits on, when the member owns the land.

A home placed in a revocable trust (See 22.1.4.8 Homes Placed in Revocable Trusts).

Life Estates created on or after August 1, 2014.

When a home is sold, DHS uses the lien to recover certain payments for Medicaid services provided as listed in 22.1.2 Recoverable Services. The lien's value is "open ended." The lien's value increases as the amount of recoverable Medicaid services paid accumulates.

Payment of the lien is made directly to DHS. Do not accept any payments relating to liens filed by DHS.

Contact the ERP Estate Recovery Specialist if the member's home is sold within 45 days after the Notice of Intent to File a Lien is completed.

### **The lien has no effect until filed.**

Example 1: Mr. A applies for Medicaid on 03-06-95. He has a home and his circumstances require a lien. The IM agency sends a Notice of Intent to File a Lien on

03-10-95. ERP staff cannot file a lien until 04-24-95 because of the required 45 day waiting period. Mr. A's legal representative sells the property on 04-10-95. Recovery of Mr. A's Medicaid payments by a lien on that property is not possible as the property was sold before a lien was filed. The IM agency contacts the ERP Lien Specialist to report on the home's sale.

*MEH*, §22.1.4. As pertains to the the present matter specifically, the handbook states:

ERP staff delays further action until the period given the member to request a fair hearing passes. If no hearing is requested, ERP staff will file a lien on the property with the Register of Deeds for the county in which the property is located. **If a hearing is requested, a lien is not filed until approved by a hearing decision.**

*MEH*, §22.1.4.1 (emphasis added).

The respondent sent petitioner a Notice of Intent to File a Lien on or about April 25, 2014. A lien has not yet been filed because petitioner timely filed a Request for Fair Hearing on May 30, 2014. A hearing on a lien action addresses a very specific issue:

A member or his/her representative may request an administrative hearing if s/he feels the statutory requirements for imposing the lien have not been met. The IM Agency attends the hearing to explain the decision to file the Notice of Intent to File a Lien. The only issue at the hearing will be whether the following requirements were satisfied:

1. The member has an ownership interest in a home.
2. The member resides in a nursing home or hospital.
3. The member cannot reasonably be expected to be discharged from the nursing home or hospital and return home to live.
4. None of the following lawfully reside in the home:
  - a. The member's spouse.
  - b. The member's child who is:
    - Under age 21, or
    - Disabled, or
    - Blind.
  - c. The member's sibling who has an ownership interest in the home and who has lived in the home continuously beginning at least 12 months before the member was admitted to the nursing home or hospital.

*MEH*, §22.1.4.7.

The petitioner does not have an ownership interest in a home. Testimony provided by petitioner indicates that the petitioner's property has been sold to a third party. This is not disputed by the respondent. And while petitioner did possess such an ownership interest previously, the *MEH* calls for an analysis of the present status of matters by identifying the issue as whether "the member **has** an ownership interest." *Id.* The *MEH* does not ask if the member **HAD** an ownership interest. The example cited above (see *MEH*, §22.1.4) further supports this conclusion by noting that it is anticipated that an individual may sell his home prior to a lien being filed. As such, I conclude that the statutory requirements for imposing a lien have not been met.

**CONCLUSIONS OF LAW**

The respondent cannot obtain a lien against the petitioner's home, as he no longer has an ownership in the home against which the respondent seeks to file the lien.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the respondent to rescind the Notice of Intent to File a Lien and cease any action to file a lien on the property identified as Redact, Fond du Lac, WI Redact.

**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.

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\sPeter McCombs  
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 January 22, 2015.

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