



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
[Redacted]
Redact

DECISION

MDV/161877

PRELIMINARY RECITALS

Pursuant to a petition filed November 11, 2014, under Wis. Stat., §49.45(5), to review a decision by the Dane County Dept. of Human Services to deny Medical Assistance (MA), a hearing was held on December 17, 2014, by telephone.

The issue for determination is whether petitioner is eligible for a good cause exception to a divestment penalty.

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
[Redacted]
Redact

Respondent:

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

By: [Redacted]

Dane County Dept. of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [Redacted]) is a resident of Dane County.
2. In March, 2014, petitioner was awarded \$68,314 in a personal injury settlement. Petitioner disclaimed acceptance of the award, and instead it was given to family members.

3. On August 25, 2014, an application for nursing home MA was filed on petitioner's behalf, seeking coverage back to June 1, 2014. In early October, the county denied the application due to a divestment penalty. The county determined that \$68,314 was divested, making petitioner ineligible for MA from June 1, 2014 through March 7, 2015.

DISCUSSION

When an individual, the individual's spouse, or a person acting on behalf of the individual or his spouse, transfers assets at less than fair market value, the individual is ineligible for MA coverage of nursing facility services. 42 U.S.C. 1396p(c)(1)(A); Wis. Stat. §49.453(2)(a); Wis. Adm. Code §DHS 103.065(4)(a); MA Handbook, Appendix 17.2.1. Divestment does not impact on eligibility for standard medical services such as physician care, medications, and medical equipment (all of which are known as "MA card services" in the parlance). The penalty period is the number of days determined by dividing the value of property divested by the average daily nursing home cost to a private pay patient (\$243.49 in 2014). MA Handbook, App. 17.5.2.

First, the disclaimer by petitioner of the award clearly was a divestment. It was done solely to deplete petitioner's assets for MA purposes. Not accepting a personal injury award is listed specifically as a type of action that is a divestment. See MA Handbook, App. 17.2.1, no. 2.c. Petitioner's attorney-in-fact testified that the attorney who handled the injury settlement told them that disclaiming the award would not be considered divestment, which was unfortunate advice but does not cut against the idea that petitioner knowingly gave up the property to become eligible for MA.

The main issue is whether the county correctly denied the undue hardship request. The Wisconsin Administrative Code, §DHS 103.065(4)(d)2.d provides that a divestment penalty can be avoided if there would be an undue hardship, and defines "undue hardship" to mean "that a serious impairment to the institutionalized individual's immediate health status exists." The MA Handbook, App. 17.17.1 provides:

A divestment penalty period must be waived when the imposition of the penalty period deprives the individual of:

- Medical care such that the individual's health or life would be endangered; **or**
- Food, clothing, shelter, or other necessities of life

The Handbook goes on to say at App. 17.17.5 that the following proof is needed with a hardship application:

If the *member is currently institutionalized*, s/he must submit a copy of the notification sent from the LTC facility which states both the date of involuntary discharge and alternative placement location or other proof that if the hardship waiver is not granted, the individual will be deprived of medical care such that the individual's health or life would be endangered; or deprived of food, clothing, shelter, or other necessities of life.

The county denied the hardship application because it was felt that it was a true divestment; petitioner knowingly divested the property when she was aware that it could affect MA eligibility. There is nothing in the undue hardship policy, however, about the person's reason for divestment or state of mind in making the divestment. The only factor is whether there is an immediate impairment to the person's health.

Based upon the evidence before me, I cannot conclude that there is an undue hardship. First, there has not been an action to discharge petitioner. Second, there is no evidence that there is an impending deprivation

of medical care or other necessities of life. Petitioner's ex-husband/attorney-in-fact testified that she has become attached to the nursing home at which she has resided since 2005, and that she has unusual needs. The person's mental/emotional status is not a factor in the undue hardship decision, however. There is evidence that petitioner has substantial care needs, but there is no evidence that an alternative placement would be unable to address petitioner's needs.

This conclusion does not mean that petitioner might not have an immediate impairment to her health status. It only means that the evidence before me does not rise to that level.

CONCLUSIONS OF LAW

1. Petitioner divested property in 2014 when she disclaimed a personal injury settlement.
2. There is insufficient evidence that petitioner would experience an undue hardship if the divestment penalty remains in place.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 7th day of January, 2015

\sBrian C. Schneider
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 7, 2015.

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