



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/162396

PRELIMINARY RECITALS

Pursuant to a petition filed December 04, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Polk County Department of Social Services in regard to Medical Assistance, a hearing was held on January 15, 2015, at Balsam Lake, Wisconsin.

The issue for determination is whether the petitioner is eligible for institutional medical assistance before November 22, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Nancy Randall

Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Polk County.
2. The petitioner applied for institutional medical assistance on September 23, 2014. The county agency found her eligible as of November 22, 2014.

3. The petitioner transferred her homestead property into a trust and retained a life estate. She later deeded a life estate she retained in her house to her children. The purpose of this action was to make it easier to sell the house.
4. The petitioner had over \$2,000 in her bank accounts until late in November 2014.

DISCUSSION

The petitioner applied for institutional medical assistance on September 23, 2014, requesting benefits retroactive to August 1, 2014. A person cannot receive medical assistance if her assets exceed \$2,000. Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. §§ 49.46(1) and 49.47(4). She cannot reach this limit by divesting assets. This occurs if she or someone acting on her behalf “disposes of resources at less than fair market value” within five years of her “look-back date.” The look-back date is the first date on which she is both institutionalized and has applied for medical assistance. Wis. Admin. Code, § DHS 103.065(4)(a); Wis. Stat. § 49.453(1)(f) and (2)(a). The period of ineligibility is obtained by dividing the amount given away by the statewide average monthly cost to a private pay patient in a nursing home when she applied. Wis. Admin. Code, § DHS 103.065(5)(b). Beginning January 1, 2009, county agencies were instructed to use the average daily cost of care and determine ineligibility to the day rather than to the month. The daily amount is currently \$243.49 *Medicaid Eligibility Handbook*, § 17.5.2.2.

The agency determined that the petitioner was ineligible for benefits until November 22, 2014, because she divested a life estate worth \$27,729.95 by giving it to her children. It also contends out that her assets exceeded \$2,000 until the end of November 2014, so even without the divestment she could not have been eligible before November 1, 2014. She challenges both claims.

I will consider the second contention first. The petitioner’s representatives point out that she had debts she could have paid if they had been aware of the \$2,000 limit. Unfortunately, there is no legal authority to count debts against assets when determining eligibility, and the Division of Hearings and Appeals has no equitable power that would allow it to consider the fairness of the situation. Although her assets only exceeded \$2,000 by a small amount in October, she cannot be eligible until after that month, regardless of the ruling on the alleged divestment.

The background of the alleged divestment is that at some point she gave the property to her children and retained a life estate. Later, within her look-back period, she transferred this life estate to her children. I can only find partial documentation supporting this, but I will accept the testimony. The agency determined that she was ineligible for 113 days by dividing the \$27,729.95 value of the life estate by the \$243.49 daily cost of nursing home care. Her representatives testified that she deeded the life estate to unify the title and make the property easier to sell. There is no divestment if the applicant transferred the asset “exclusively for some purpose other than to become eligible for MA.” Wis. Admin. Code, § DHS 103.065(4)(d)2.b. I will accept the explanation by the petitioner’s representatives and find that a divestment did not occur because the life estate was transferred solely for a reason other than to become eligible for medical assistance. Because there is no divestment, her eligibility began on November 1, 2014.

I note that money received from any sale of the property could affect the petitioner’s future eligibility. If her relatives keep the portion of the proceeds equal to the life estate for themselves, it will be a new divestment. If they place the proceeds in her account, it will be counted as her asset, which if it exceeds \$2,000 will leave her ineligible for medical assistance. She probably can avoid this problem by paying any outstanding bills—especially her nursing home bill—before the end of the month in which the house is sold.

CONCLUSIONS OF LAW

1. The petitioner was ineligible for medical assistance before November 1, 2014, because her assets exceeded \$2,000 until that month.
2. The petitioner did not divest a life estate because she gave it away solely for a purpose other than to become eligible for medical assistance.

THEREFORE, it is**ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it take all steps necessary to find the petitioner eligible for institutional medical assistance retroactive to November 1, 2014.

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 12th day of February, 2015

\sMichael D. O'Brien
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 February 12, 2015.

Polk County Department of Social Services
Division of Health Care Access and Accountability