



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDV/168214

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 25, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on September 29, 2015, at Kenosha, Wisconsin.

The issue for determination is whether the agency correctly concluded that there was a divestment from the sale of the petitioner's primary residence.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Karen Mayer

Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On June 4, 2015 the petitioner notified the agency that she was going to sell her home.

3. The petitioner's real estate agent completed a market analysis of her home. The agent recommended pricing the home between \$35,000 and \$52,000. The petitioner listed her home for sale at a price of \$44,900.
4. While the home was on the market there were multiple showings of the home. The home had many issues including a foundation problem, a wet basement, and a shared driveway. Many people were not interested in the home at any price.
5. The first offer that the petitioner received was for \$30,000. That offer ultimately fell through. The petitioner received another offer for \$25,000. That offer was from an unrelated buyer who was represented by a different real estate agent. On June 30, 2015 the petitioner closed on the sale of her home. The sales price was \$25,000. Of that \$25,000 the petitioner received \$17,962.74 at closing. The difference covered various closing costs including realtor fees, property taxes, title insurance, and a transfer tax.
6. The sale of the petitioner's home was an "arm's length" transaction.
7. On August 5, 2015 the agency sent the petitioner a notice stating that the petitioner's medical assistance nursing home application had been denied effective September 1, 2015 because the sale of the home was a divestment. The agency calculated the divestment amount to be the difference between the "fair market value" of \$44,900 and the sales price of \$25,000.
8. On August 21, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

### DISCUSSION

When an individual, 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)(a)(A); Wis. Stat. §49.453(2)(a); Wis. Adm. Code § DHS 103.065(4)(a); *MA Handbook*, 17.2.1. This transfer is defined as a divestment. *Id.* The divestment must occur during the five year look back period. Wis. Stat. § 49.453(1)(f)(2m). Divestment does not impact on eligibility for standard medical services such as physician care, medications, and medical equipment. The divestment penalty period is the determined by dividing the value of property divested by the average monthly cost of nursing facility services. Wis. Stat. § 49.453(3); *MA Handbook*, App. 17.5.

The issue in this case is whether the sale of the petitioner's home was a divestment. If the home was sold at less than fair market value, then the sale is a divestment. This situation is more typical if a person sells the home to a relative for much less than the home is worth knowing that the person is going to a nursing home where the assets will be depleted. The agency testified that they use the amount of the tax assessment as the fair market value of a property. If a person disagrees with that, the person may submit a market analysis, and they will use the market analysis.

In this case the petitioner submitted a market analysis, listed her home for sale, and priced in accordance with the market analysis. Her real estate agent credibly testified that there were multiple showings of the home. Many people were not interested in the home due to a shared driveway and foundation issues. Ultimately they received two offers while the home was listed. One offer was in the amount of \$30,000. The buyer backed out of the deal a few days after making the offer. There was then another offer in the amount of \$25,000. This offer closed. The petitioner received \$17,962.74 at closing. By all accounts this was an arm's length transaction. The petitioner listed her home for sale with a real estate agent. An unrelated buyer purchased her home. The buyer was represented by a different real estate agent.

The issue is the fair market value of the petitioner's home. Wis Stat. § 70.32(1) law provides the following guidance in determining the value of a property:

[] In determining the value, the assessor shall consider recent arm's-length sales of the property to be assessed if according to professionally acceptable appraisal practices those sales conform to recent arm's-length sales of reasonably comparable property; recent arm's-length sales of reasonably comparable property; and all factors that, according to professionally acceptable appraisal practices, affect the value of the property to be assessed.

The real estate agent testified that he was disappointed and a little surprised that the petitioner could not get more money for her home. Unfortunately there were issues with the property that affected the value. It is common knowledge that something is only worth what someone is willing to pay for it. Despite showings, and attempts to get more money for this property, the most a person was willing to pay for it was \$25,000. That is the fair market value of the property. I can find nothing in the divestment section that states the agency must use the tax assessment amount or a market analysis amount as the fair market value of a home. I find that there was no divestment in this case.

I note that this case could be different if there was any evidence that this was not an arm's length transaction. However, the petitioner hired and paid for a real estate agent who sold the property for the fair market value given the issues with this particular property.

### **CONCLUSIONS OF LAW**

The agency incorrectly concluded that there was a divestment.

**THEREFORE, it is ORDERED**

That no divestment occurred, and this case is remanded back to the agency to reprocess the petitioner's Medicaid-Nursing Home application consistent with the finding that there was no divestment.

### **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 Milwaukee,  
Wisconsin, this 2nd day of October, 2015

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\sCorinne Balter  
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 October 2, 2015.

Kenosha County Human Service Department  
Division of Health Care Access and Accountability