



FH
[REDACTED]

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

In the Matter of

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

DECISION

MDV/168605

PRELIMINARY RECITALS

Pursuant to a petition filed September 08, 2015, 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 October 15, 2015, at Balsam Lake, Wisconsin.

The issue for determination is

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

[REDACTED]

Respondent:

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

By: [REDACTED]

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 and his wife sold their house on May 5, 2014, for \$81,270.52. Later that month they gave four of their children a total of \$52,000.

3. The petitioner entered a nursing home in late May or late June 2015.
4. The petitioner applied for institutional medical assistance on July 22, 2015. The county agency determined that the money the petitioner gave to his children was a divestment and found him ineligible for institutional benefits for 209 days.

DISCUSSION

A person cannot receive medical assistance if his assets exceed \$2,000. Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. §§ 49.46(1) and 49.47(4). He 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 the “look back date.” The look back date is five years before the latter of when he was considered institutionalized and when he applied for medical assistance. Wis. Stat. § 49.453(1)(f); *Medicaid Eligibility Handbook*, § 17.5.3.. If someone improperly divests his assets, he is ineligible for institutional medical assistance for the number of days obtained by dividing the amount given away by the statewide average daily cost to a private pay patient in a nursing home when he applied; this is currently \$252.95. Wis. Admin. Code, § DHS 103.065(5)(b). *Medicaid Eligibility Handbook*, § 17.5.2. A divestment does not bar eligibility if he shows to the “satisfaction of the department” that the “resource was transferred exclusively for some purpose other than to become eligible for MA.” Wis. Admin. Code, § 103.065(4)(d)2.d.

The petitioner entered a nursing home either in late May or late June of this year; the record contains conflicting information that the parties could not clear up. The previous May he and his wife sold their house for \$82,270.52 and then gave \$52,000 of this to four of their children. The county agency determined that this was a divestment that left the petitioner ineligible for 209 days. His daughter, who acts as his power of attorney, contends that her parents were trying to help her three siblings, who had large debts, and her.

Because the petitioner must show that he gave the money away for some purpose other than to become eligible for medical assistance to “the satisfaction of the department,” the burden of proof rests with him. His daughter testified that her parents are frugal persons who require little for themselves and did not even know what Medicaid was when they gave the money away.

On the other hand, her father is 92 and her mother is 89. Before moving out of their house, he had a stroke. I assume they moved out of their house and into an apartment because age made it difficult to maintain the house. He now has dementia that his daughter claims leaves him unable to testify. She did testify that her father was doing well last year despite his problems. Still, one would think that a person over 90 who has had a stroke and likely was beginning to suffer from dementia would have considered his medical options.

This is a close case that ultimately depends upon whether the petitioner really was unaware that giving money away would affect his ability to get Medicaid. What tips it in his favor is that his wife remains in the community and thus needs a place to live. If their goal was to reduce their assets to allow him to become eligible for medical assistance, they could have shielded the assets fairly easily by purchasing a small, easy-to-care-for condominium, which would have been exempt homestead property that did not count toward his medical assistance asset limit. I would have preferred more evidence concerning his knowledge, but I must write my decision using the evidence I have. Because the evidence concerning whether the petitioner gave money away solely for some purpose other than becoming eligible for medical assistance is slightly in his favor, I will remand this to the county agency to allow him to become eligible for institutional medical assistance without a divestment period.

As alluded to earlier, it is unclear when the petitioner entered the nursing home. Because both late May and late June were within three months of when he applied, he is eligible retroactive to whatever that date

is. The petitioner’s daughter should provide records from the nursing home to the agency to establish this. See Wis. Admin. Code § DHS 103.08(1).

CONCLUSIONS OF LAW

1. The petitioner did not divest any assets when he gave money to his children after selling his house because he did not give away the money to become eligible for medical assistance.
2. The petitioner is eligible for medical assistance as of the date he entered the nursing home.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 20 days of the date of this decision it find the petitioner eligible for medical assistance retroactive to the date he entered the nursing home. The petitioner’s representative shall provide proof of the date he entered the nursing home to the county agency within 10 days of the date 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 16th day of October, 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 October 16, 2015.

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