



FH
[REDACTED]

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

In the Matter of

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

DECISION

MGE/174161

PRELIMINARY RECITALS

Pursuant to a petition filed May 9, 2016, under Wis. Stat., §49.45(5), to review a decision by Waukesha County Health and Human Services to discontinue Medical Assistance (MA), a hearing was held on June 14, 2016, at Waukesha, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether petitioner’s representative failed to verify information.

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a nursing home resident of Waukesha County. He died on June 7, 2016.
2. Petitioner was receiving institutional MA until the county action. His wife lived in the community and thus was considered to be a community spouse under spousal impoverishment provisions.

3. Petitioner's wife died in late January, 2016. Atty. ██████ sent the county a letter in March advising the worker of her death.
4. On March 17, 2016, the county sent Atty. ██████ a verification request asking for bank statements, income verification, and the following: "... under Wisconsin law, a person is entitled to a portion of his or her spouse's estate. If the institutionalized person does not contest his or her spouse's will in this instance, the inaction may be divestment. Please also provide proof of whether or not you will receive an income per the terms of [your wife's] trust or from any other source." The deadline was set at March 28, 2016.
5. Petitioner's wife created a revocable trust in December, 2008 which, as of her death, contained as its only asset the couple's homestead property. On January 27, 2009 petitioner quitclaimed the property to his wife as her individual property and waived marital rights in the deed. On the same day the couple signed a marital property agreement waving the rights to each other's individual property and saying that individual property would pass to the couple's children.
6. On March 28 Atty. ██████ provided copies of bank statements and income verification. She also attached a copy of the marital property agreement and stated: "Therefore, [petitioner] is not entitled to any of the assets (except for the joint checking account at BMO Harris Bank) of his deceased wife, ... and there is nothing to contest and no divestment. Please let me know if any other information is needed."
7. The county was unsatisfied with the response about the property. A worker e-mailed the state call center and asked if the marital property agreement was sufficient to show that petitioner did not have to contest his wife's will/estate. The call center responded: "Our programs and policies do not recognize wills or marital agreements. A surviving spouse would need to seek action for entitlement of a deceased spouses (sic) assets, otherwise a divestment penalty period would be imposed."
8. On March 29, 2016 the agency sent a notice explaining that benefits will be ending on May 1, 2016 because he did not provide required proof. The other reasons in the notice are irrelevant to the discontinuance.
9. On June 9, 2016 the county sent petitioner a notice that he was ineligible for nursing home MA from January 24, 2016 through August 25, 2018 because it concluded that petitioner divested his homestead.

DISCUSSION

The county closed petitioner's nursing home MA May 1, 2016 not because of a divestment but because he failed to verify information.

An MA recipient is required to verify information that can affect eligibility. Wis. Admin. Code, §DHS 102.03. If the household fails to verify required information by the time limit, the agency may deny the benefits. Wis. Admin. Code, §DHS 102.03(1). The agency should assist the applicant if he requests assistance. MA Handbook, §20.1.4. If sources of verification are unavailable, the agency should use the best information available. Id.

The Handbook, §9.11.4, provides as follows:

Deny or reduce benefits when all of the following are true:

1. The member has the power to produce the verification.
2. The time allowed to produce the verification has passed.

3. The member has been given adequate notice of the verification required.
4. You need the requested verification to determine current eligibility. Do not deny current eligibility because a member does not verify some past circumstance not affecting current eligibility.

In this case a tricky sleight of hand occurred. Atty. ██████ provided verification and reported that petitioner's wife's assets were unavailable to petitioner because of the marital property agreement. When the county worker asked the state worker about the situation, the state worker responded that if the surviving spouse did not make an estate claim, there was a divestment. It is evident that at that point the county decided that petitioner had divested property because his representative proclaimed that no estate claim would be made. However, the county then discontinued MA because of failure to verify.

The conclusion was based upon a misreading of the law by the state worker. The Handbook, §17.2.1, no. 2 provides that it is a divestment if a person avoids receiving income or assets he is entitled to receive. One such avoidance is:

Refusing to take action to claim the statutorily required portion of a deceased spouse's or parent's estate. Count the action as a divestment only if:

- The value of the abandoned portion is clearly identified, and
- There is certainty that a legal claim action will be successful. The agency Corporation Counsel makes this determination

The state worker said that it is divestment automatically if the person does not make a claim against the estate. That is incorrect. If the surviving spouse tells the agency that he will not make a claim, then the agency must refer the matter to the corporation counsel to determine whether there is a certainty that a legal claim would be successful. Therefore, when Atty. ██████ responded on March 28, the county's response should have been to refer the matter to the corporation counsel, not to simply close MA for failing to verify information. Presumably the corporation counsel would have asked Atty. ██████ for more information, like, for example, copies of the trust document and of the deed (it is unclear to me whether either of those documents were ever provided to the county).

I conclude that the discontinuance was incorrect. Although petitioner died before the June 9 divestment notice went out, I also conclude that that notice was incorrect because the county still has not determined whether there is a certainty that a legal claim would be successful.

CONCLUSIONS OF LAW

The county incorrectly closed petitioner's nursing home MA because it incorrectly determined that petitioner was required to make a claim on his deceased wife's estate despite assertions by petitioner's attorney that no claim could be made.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to reinstate petitioner's nursing home MA for the period May 1, 2016 through the date of his death. The county shall do so within 10 days 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 22nd day of June, 2016

\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 June 22, 2016.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability
Attorney [REDACTED] [REDACTED]