



FH
[REDACTED]

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

In the Matter of

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

DECISION

MDV-174683

PRELIMINARY RECITALS

Pursuant to a petition filed May 25, 2016, under Wis. Stat., §49.45(5), to review a decision by the Marinette County Dept. of Human Services to deny Medical Assistance (MA), a hearing was held on July 5, 2016, at Marinette, Wisconsin, with the judge appearing by telephone.

The issue for determination is whether the county correctly determined that a divestment occurred.

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: [REDACTED]
Marinette County Dept. of Human Services
1605 University Drive
Marinette, WI 54143

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marinette County.
2. An application for MA was filed on petitioner's behalf on March 14, 2016. Although initially it was requested for the IRIS home-based MA waiver program, at hearing it was reported that petitioner is in a nursing home.

3. Petitioner and her husband, both now in their 80s, lived on a family farm. Petitioner's son and daughter-in-law also lived on the farm but in a separate home, and petitioner's son now is the primary operator of the farm.
4. Petitioner was diagnosed with dementia in 2011.
5. On March 14, 2012 petitioner and her husband sold their home to petitioner's son and daughter-in-law. The home was valued at \$124,300, but the sale price was \$60,000.
6. The county determined that petitioner and her husband divested property in the amount of \$64,300 (\$124,300 value minus \$60,000 sale price). By a notice dated April 20, 2016 the county denied MA due to the divestment. The ineligibility period would be 254 days.
7. As petitioner's illness worsened petitioner's daughter-in-law spent nights at petitioner's home, primarily to prevent petitioner from wandering. Neither petitioner's son nor her daughter-in-law actually moved into the home at any time.

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 within 60 months prior to an MA application, the individual is ineligible for MA coverage of nursing facility services and home-based MA waiver services such as the IRIS program. 42 U.S.C. 1396p(c)(1)(A); Wis. Stat., §49.453(2)(a); Wis. Admin. 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 (currently \$252.95). MA Handbook, App. 17.5.2.

Clearly the transfer here was for less than market value, so divestment is an issue. A divestment penalty will not be imposed if the transfer was made for a reason other than the intent of receiving MA. Petitioner's son testified that the reduced price was meant to account for petitioner and her husband continuing to live in the home. While that is a reasonable purpose, petitioner's health and potential for needing nursing care had to have been in the minds of the parties given that the transfer occurred soon after petitioner's dementia diagnosis. I cannot conclude that the transfer at less than fair market value was solely for reasons other than potential MA coverage.

There is an exception to the divestment penalty as follows:

The institutionalized person or his or her spouse divests homestead property to his or her:... b. Child ... [who has] Been residing in the institutionalized person's home for at least two years immediately before the person moved to a medical institution, and provided care to him or her which permitted him or her to reside at home rather than in the institution. This care must have been provided for the entire two years immediately before the person moved to a medical institution. Get a notarized statement that the person was able to remain in his or her home because of the care provided by the child.

MA Handbook, App. 17.4, no. 7; the Handbook provision echoes Wis. Admin. Code, §DHS 103.065(4)(b)4. Petitioner's primary argument rests with this exception. The exception fails for several reasons. First, the care was not provided by petitioner's child, but by her daughter-in-law. Second, petitioner's daughter-in-law never resided with petitioner; spending nights to provide supervision is not the same as residing with the person. Third, the divestment occurred before the care was provided by petitioner's daughter-in-law; the wording of the exception makes it evident that the divestment must occur

after the care is provided as a reward for or compensation for providing the care. The care provided by petitioner's daughter-in-law was not the reason the home was transferred for less than fair market value.

I conclude that the county agency correctly determined that a divestment occurred and the penalty period for the divestment. I note finally that [REDACTED] contacted me after the hearing to ask if he could e-mail a further response to the county's presentation, in particular concerning whether anyone ever asked the family of care provided to petitioner. I did not receive an e-mail, and it is apparent to me that the county asking about petitioner's care would not have changed the result.

CONCLUSIONS OF LAW

1. Petitioner and her husband divested \$64,300 in 2012 by selling their home to their son for less than fair market value.
2. The transaction was not permitted under the exceptions to the divestment rules.

THEREFORE, it is

ORDERED

That the petition for review 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, **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 18th day of July, 2016

\s _____
Brian 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 July 18, 2016.

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