



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MDV - 175117

PRELIMINARY RECITALS

Pursuant to a petition filed on June 20, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock Cty. Dept. of Social Services regarding Medical Assistance (MA), a hearing was held on July 28, 2016, at Rock County.

The issue for determination is whether petitioner has divested assets in order to remain eligible for MA.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: 
Rock Cty. Dept. of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:
Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Rock County and is certified for MA.
2. Petitioner owns her home and does not have a mortgage. Petitioner's annual property taxes are \$1,589.00 and she pays annual homeowners insurance in the amount of \$540.00.

3. Petitioner sought to open an escrow account with her bank to hold funds for payment of her annual property taxes and homeowners insurance, but the bank refused that request, since she does not have a mortgage on her home.
4. Petitioner contacted her County office regarding making payments on her property tax bill, but was informed that she cannot make payments on a property tax balance until August of that tax year.
5. Petitioner provided her son with \$1,630.00 to hold for her to pay her property taxes. The funds were to be used only for the payment of annual property taxes and homeowners insurance.
6. The Department then undertook an assessment of petitioner's available assets and determined that the \$1,630.00 was a divestment.
7. Petitioner filed a timely appeal.

DISCUSSION

A person cannot receive institutional medical assistance if her assets exceed \$2,000. See Wis. Stat. §§ 49.46(1) and 49.47(4). Generally, a person cannot reach this limit by divesting assets, which occurs if she or someone acting on her behalf "disposes of resources at less than fair market value" within five years or later of when she was institutionalized and applied for medical assistance. Wis. Admin. Code, § DHS 103.065(4)(a); Wis. Stat. § 49.453(1)(f).

If the person improperly divests her assets, she is ineligible for institutional medical assistance for the number of months obtained by dividing the amount given away by the statewide average monthly cost to a private-pay patient in a nursing home at the time she applied. Wis. Adm. Code, § DHS 103.065(5)(b). Beginning on 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 \$252.95 *Medicaid Eligibility Handbook*, § 17.5.2. A divestment does not bar eligibility if "[t]he resource was transferred exclusively for some purpose other than to become eligible for MA."

In its June 7, 2016, Negative Notice, the respondent wrote:

On 5/11/16 [petitioner] closer her money market account... The previous balance in that account was \$1,900.07. [Petitioner] used \$270.00 to pay her homeowner's insurance, but the balance of the money received from closing the money market account ... \$1,630.07 was given to [petitioner's son] to "hold for safekeeping" per a letter written by [petitioner]. This transfer of funds for less than fair market value is divestment. You are ineligible for the Medicaid Waiver Program from 5/1/16 to 5/6/16.

The issue in dispute here is whether the \$1,630.07 placed with petitioner's son for the purposes of payment of property taxes and homeowners insurance was a divestment, and, if so, the consequences of that divestment. I conclude that this was not a divestment.

The critical inquiry to me hinges on the definition of "divestment" in the *Medicaid Eligibility Handbook*:

17.2.1 Divestment

"Divestment" is the transfer of income, non-exempt assets, and *homestead* property (See 17.2.3.1 Homestead Property), which belong to an institutionalized person or his/her *spouse* or both:

1. For less than the fair market value of the income or asset by:
 - a. An institutionalized person, or

- b. His/her spouse, or
- c. A person, including a court or an administrative body, with legal authority to act in place of or on behalf of the institutionalized person or the person's spouse, or
- d. A person, including a court or an administrative body, acting at the direction or upon the request of the institutionalized person or the person's spouse. This includes relatives, friends, volunteers, and authorized representatives.

Medicaid Eligibility Handbook § 17.2.1 (emphasis added). Petitioner testified that she provided the monies at issue here to her son for the sole purpose of utilizing those monies to pay her property taxes and a second installment on her homeowner's insurance. Thus, payment of these expenses will result in a cure of the apparent divestment. The Department has not argued or offered any evidence that the monies presently held on petitioner's behalf by her son exceed petitioner's property tax and homeowner's insurance liability. The \$1,630 was not a gift to petitioner's son, but simply her way of dealing with the fact that she was unable to open an escrow account to save monthly for her annual tax and insurance bills. Under these specific facts, I consider this akin to a homeowner paying directly to an escrow account at the bank holding the homeowner's mortgage. That would not be a divestment.

I can understand the Department's concern about this transaction. It certainly seems unusual. It seems that the Department's concern was raised by the placement of the funds in the son's account to be held by him for "safekeeping," for payment of property taxes and insurance later on. I note that the Negative Notice quoted petitioner's reference to "safekeeping," but omitted any reference to the purpose of the safekeeping, which was expressly stated in petitioner's June 2, 2016 to the respondent.

I agree that this plan is unusual. Most homeowners are able to pay into a designated escrow account, and petitioner credibly testified that she sought to make such arrangements, but was unsuccessful. Under the specific facts of this case, it appears that this should not be considered a divestment.

CONCLUSIONS OF LAW

The \$1,630.07 placed with petitioner's son for the purposes of payment of property taxes and homeowners insurance was not a divestment.

THEREFORE, it is

ORDERED

That this matter is remanded to the Department and its county agent with instructions to reverse the determination that the \$1,630.07 was a divested asset, and to redetermine MA eligibility consistent with that non-divestment. These actions shall be completed within 10 days.

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 16th day of September, 2016

\s _____
Peter McCombs
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 September 16, 2016.

Rock Cty. Dept. of Social Services
Division of Health Care Access and Accountability