



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)
c/o Carol Matoushek
Coalition Of Wisconsin Aging Groups
2850 Dairy Drive Suite 100
Madison, WI 53718-6751

DECISION

MDV-13/59472

PRELIMINARY RECITALS

Pursuant to a petition filed August 25, 2003, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Dane County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on September 24, 2003, at Madison, Wisconsin.

The issue for determination is whether petitioner divested assets resulting in the imposition of a penalty period of institutional MA benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)
c/o Carol Matoushek
Coalition Of Wisconsin Aging Groups
2850 Dairy Drive Suite 100
Madison, WI 53718-6751

Respondent:

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Kathy Keller, ESS
Dane County Dept Of Human Services
1819 Aberg Avenue, Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Kenneth P. Adler
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Dane County. She has two children, a son and a daughter.
2. Petitioner and her late husband previously owned two farm properties. Petitioner's son quit school to work on his parent's farm. The intention of petitioner and her husband was to give him the farm as repayment for the amount of work he had completed without much compensation.
3. In 1995 petitioner's husband died unexpectedly.
4. Following the death of petitioner's husband, tension between herself and her daughter developed.
5. On October 23, 2001 petitioner quit-claimed the farm to her son by executing a warranty deed. The reason for this action was two-fold: (1) to honor the intention of petitioner's husband that the farm go to their son, and (2) to prevent petitioner's daughter and son-in-law from obtaining ownership of the property.
6. In August 2002 petitioner was unexpectedly hospitalized. Prior to that time she was living independently. Upon release from the hospital she was transferred to a nursing home.
7. For the period August 2002 – May 2003 petitioner was private pay in the nursing home using her own funds. Those funds were exhausted in May 2003.
8. On May 19, 2003 petitioner applied for institutional MA.
9. On May 23, 2003 petitioner participated in a face-to-face intake appointment. At that time verified the gifting of the farm to her son.
10. The county agency attempted to verify the value of the farm by contacting the attorney who completed the quit-claim deed. That attorney estimated the value to be approximately \$200,000. That is also the amount noted on the warranty deed. See Exhibit 3
11. The county agency issued no written requests for verification.
12. On July 10, 2003 the county agency issued a notice denying petitioner's application for MA based upon the conclusion she had divested assets within 36 months of application. This resulted in a divestment penalty period of 43 months. This calculation was based upon a current nursing home monthly rate of \$4,542. Exhibit 1

DISCUSSION

The issue in this particular case is whether petitioner intended to divest of property with the intent to receive MA when she gifted her farm to her son approximately 18 months before her application for MA. The parties do not dispute the assigned value of the property, nor the fact petitioner gave the farm to her son without receiving any compensation for the property.

A divestment is a transfer of assets for less than fair market value. Wis. Stat. 49.453(2)(a); *MA Handbook*, Appendix 14.2.1. A divestment or divestments made within 36 months (60 months if the divestment is to an irrevocable trust) before an application for nursing home MA may cause ineligibility for that type of MA. Wis. Stat. 49.453(1)(f); *Handbook*, App. 14.3.0. The ineligibility is only for nursing home care; divestment does not impact on eligibility for other medical services such as medical care, medications, and medical equipment – also known as “MA card services”. The penalty period is specified in Wis. Stat. 49.453(3), to be the number of months determined by dividing the value of property divested by the average monthly cost of nursing facility services. *MA Handbook*, Appendix 14.5.0.

The county agency simply explains petitioner gifted her farm to her son during the 36 month look-back period and therefore a divestment has occurred. The agency apparently did not consider any exceptions to that policy which allow for some divestments without the imposition of a penalty period.

Petitioner appeared in person to testify as to her intention in gifting the farm to her son. She explained it had always been the intention of herself and her husband to gift the farm to their son in consideration of his having worked there the majority of his life for little or no wages (petitioner testified to paying him \$50-\$75 per month as a salary). She testified after her husband died unexpectedly in 1995 things started moving quickly and tensions between herself and her daughter began to increase. Petitioner explained she wanted to make certain neither her daughter or son-in-law would be able to obtain the farm property. Therefore, petitioner gifted the property to her son in October 2001. When questioned directly as to whether she gifted the farm to her son in 2001 with the intention of becoming eligible for MA in 2003 she stated no. I find no reason to find petitioner not credible.

There is no dispute petitioner divested her farm property when she gifted that property to her son without any consideration. However, the question in this case is whether there are circumstances present which indicate this particular divestment is not a barrier to institutional MA eligibility. The circumstances are detailed in Wis. Admin. Code HFS 103.065(4)(d).

(d) Circumstances under which divestment is not a barrier to eligibility. An institutionalized individual who has been determined to have made a prohibited divestment under this section shall be found ineligible for MA as defined under s. [HFS 101.03](#) (95) unless: 1. The transfer of property occurred as the result of a division of resources as part of a divorce or separation action, the loss of a resource due to foreclosure or the repossession of a resource due to failure to meet payments; or 2. It is shown to the satisfaction of the department that one of the following occurred: a. The individual intended to dispose of the resource either at fair market value or for other valuable consideration; b. The resource was transferred exclusively for some purpose other than to become eligible for MA; c. The ownership of the divested property was returned to the individual who originally disposed of it; or d. The denial or termination of eligibility would work an undue hardship. In this subparagraph, "undue hardship" means that a serious impairment to the institutionalized individual's immediate health status exists.

Petitioner's authorized representative presents two arguments to support her request that this divestment should not be a bar to petitioner's institutional MA eligibility: (1) that petitioner transferred the farm to her son exclusively for some reason *other* than to obtain MA eligibility, and (2) that the denial of eligibility would work an undue hardship on petitioner.

Based upon the information and testimony in the record, I am persuaded petitioner divested her farm asset to her son for a reason other than to obtain MA eligibility. My reasoning is as follows. First, petitioner is a younger individual (age 61 at the time of the transfer) who had not been institutionalized prior to the transfer. Second, petitioner credibly testified the reason she had transferred the property to her son was to follow through on the intentions of herself and her husband that their son inherit the farm on which he had worked most of his life. Third, the attorney who drafted the warranty deed notes the issue of MA eligibility was not discussed with petitioner at the time of the transfer. Finally, petitioner was institutionalized and privately paying for her care until her funds were exhausted in May 2003.

MA divestment law is designed to prevent the manipulation of the MA program by allowing individuals who are capable of paying for their care to transfer assets to other individuals to preserve those assets and obtain MA eligibility. This office observes many different types of instruments and activities designed to obtain MA eligibility for someone by removing his or her assets from consideration via divestment and this administrative law judge has issued a number of decisions finding such activities to clearly meet the standard to allow the imposition of a penalty period. I do not find this to be one of those cases.

CONCLUSIONS OF LAW

1. That petitioner did not divest her farm property with the intention of obtaining MA.
2. That the divestment penalty period must be removed.

NOW, THEREFORE, it is ORDERED

That the matter be remanded to the county agency with the following instructions: (1) remove the divestment penalty period from petitioner's case and (2) certify petitioner eligible for institutional MA effective May 1, 2003 if she meets all other eligibility criteria. These actions are to be taken within ten (10) days of the date of this decision.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found 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 no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 30th day of
September, 2003

/sKenneth P. Adler
Administrative Law Judge
Division of Hearings and Appeals
113/KPA