



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MDV-59/61907

PRELIMINARY RECITALS

Pursuant to a petition filed February 13, 2004, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Sheboygan County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on March 23, 2004, at West Bend, Wisconsin.

The issue for determination is whether the petitioner divested resources by not receiving fair market value for her life estate.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Represented by:

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 McMullin, ES Supervisor
Sheboygan County Dept Of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Joseph A. Nowick
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Washington County.
2. In December, 1999, the petitioner quit claimed her home to various family members but retained a life estate in the premises.
3. On or around December 17, 2003, the remaindermen sold the property for \$107,000. After expenses, the net proceeds were \$104,999. The petitioner was 98 years old at the time.
4. The remaindermen paid the petitioner \$9,436. The petitioner paid almost the full amount of the 2003 property taxes around that time.

5. The petitioner applied for institutional MA. Around January 13, 2004, the petitioner's POA paid a family member \$1,500 for cleaning the house and removing the petitioner's personal property.

DISCUSSION

The overriding question in this case is whether the petitioner divested a resource thus disqualifying her from institutional MA eligibility for a period of two months. The county agency argued that the petitioner did not receive fair market value for her life estate in a property that was sold by the remaindermen. A divestment is a transfer of assets for less than fair market value. Sec. 49.453(2)(a), Wis. Stats.; MA Handbook, Appendix 14.2.1. 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. Sec. 49.453(1)(f), Stats.; 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 (all of which are known as "MA card services"). The penalty period is specified in sec. 49.453(3), Stats., to be the number of months determined by dividing the value of property divested by the average monthly cost of nursing facility services.

The *Wisconsin Administrative Code*, at *HFS 103.06(6)*, contains the following concerning life estates:

(6) LIFE ESTATE. The applicant or recipient may hold a life state without affecting eligibility for MA. If the property or the life estate is sold, any proceeds received by the applicant or recipient shall be considered assets. In this subsection, "life estate" means a claim or interest a person has in a homestead or other property, the duration of the interest being limited to the life of the party holding it with that party being entitled to the use of the property including the income from the property in his or her lifetime.

The *Medicaid Eligibility Management Handbook (MEMH)*, at Appendix 11.8.1.5, states the following:

A life estate gives a person certain property rights for his/her lifetime. S/he has the right to possess and use it, and to make money from it. S/he also has the right to sell his/her interest in it.

The person does not have the title to or the right to sell the property. S/he usually may not pass it on to his/her heirs as an inheritance. S/he is liable for all costs of the property such as taxes and repairs, unless s/he moves off the property or the will (or deed) states otherwise.

When property is conveyed to one person for life (life estate holder) and to another person (the remainder man), both a life estate interest and a remainder interest are created. When the life estate holder dies, the remainder man holds full and unconditional title to the property and can dispose of it as s/he wishes (fee simple).

The first issue is whether the petitioner was responsible for the real estate taxes in 2003. The county agency stated that the taxes were not listed in the closing statement. The statutory language regarding a life estate as an interest in property in Wisconsin, is found in §700.02(3), Wis. Stats. A tenant for life has all the rights of occupancy in the lands of the remainderman. (See U. S. v. Cook, 86 US 591 (1873).) A life tenant has been compared to a trustee in that neither can dispose of the property to the extent it would injure the remainderman/beneficiary. The difference is that the life tenant may use the property for his or her benefit including the taking of all income and profits. (See Estate of Larson, 261 Wis. 206, (1952).) The life tenant must make all ordinary reasonable and necessary repairs to the property to preserve it for the remainderman. (See In re Matthew's Estate, 210 Wis. 109 (1932).) The life tenant must also pay the related expenses associated with the property. Thus, as the petitioner owned the life estate for almost all of 2003, she was responsible to pay almost all of the property taxes for that year, which she did. There was no divestment involved with that payment.

The next issue is the valuation of the life estate upon the date of sale. The State of Wisconsin uses the table used by the Social Security Administration (SSA). That table is found in the *Social Security Operation Manual (POMS)*, which is the Social Security Administration's policy document for the SSI program. The MA program also uses the table. The *Medicaid Eligibility Handbook (MEH)*, at Appendix 11.8.1.5, mandates the following method to determine the value of a life estate or remainder interest:

1. In the Life Estate and Remainder Interest Table (30.2.0) find the line for the person's age as of the transaction date.
2. Multiply the figure on that line in the Life Estate or Remainder column times the fair market value to determine the value of the life estate or remainder interest.

The petitioner argues that the table in the *Medicaid Eligibility Handbook* is over 25 years old and is not valid given today's economic realities. The validity of that table in the *Medicaid Eligibility Handbook* is beyond the scope of this decision. The Wisconsin Medicaid State Plan states the following:

As a condition for receipt of Federal funds under title XIX of the Social Security Act, the Department of Health and Family Services (Single State Agency) submits the following State plan for the medical assistance program, and hereby agrees to administer the program in accordance with the provisions of this State plan, the requirements of titles XI and XIX of the Act, and all applicable Federal regulations and other official insurances of the Department.

As discussed, the controlling, federal policy authority is found in the *POMS*. For treatment of resources in the MA program, the Department must act consistently with the SSI rules. The relevant provision in the *POMS Manual* on life estates is in table in SI 01140.110, which states:

Using the table in SI 01140.120, multiply the CMV (current market value) of the property by the life estate or remainder interest decimal that corresponds to the individual's age.

The use of the Life Estate and Remainder Interest Table is the law and policy that the county agency must use. I must note that the petitioner seemed to be implying that the use of the table in the *MEH* is unfair. The law does not permit the Division of Hearings and Appeals (DHA) to ignore or substitute another table or exercise equitable powers; i.e., the ability to disregard policy or law based on general considerations of fairness. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). DHA must base its decisions on the law and policy governing the program involved in a specific case, here the MA program. Thus the county agency correctly determined that the multiplier to calculate the value of the petitioner's life estate at the time of sale was .21.

The petitioner agreed that the *net* sale amount \$104,999. That means that the value of the life estate was \$22,049. After subtracting the \$9,431 paid to the petitioner, the remainder is divided by the monthly nursing home rate of \$4,542 resulting in a disqualification period of 2.68 months. See the *Medicaid Eligibility Handbook*, Appendix 14.4.0. That is rounded down to 2 months. There was another issue concerning \$1,500 transferred from the petitioner at the time of application. It is unclear whether the county agency is still considering that as part of the divestment. I do note that even if the work provided in cleaning the house was worth \$500 and the remaining \$1,000 was included in the divestment, the disqualification period would be 2.9 months. Thus, it would have no impact on the length of that period. Based on the testimony at the hearing, I believe that the work cleaning the house was worth at least \$500.

CONCLUSIONS OF LAW

1. The county agency correctly determined the value of the petitioner's life estate.
2. The petitioner has a divestment period of two months.

NOW, THEREFORE, it is

ORDERED

That the case is remanded to the county agency to change the divestment period to two months. In all other matters, the petition for review is hereby dismissed.

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 that 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 7th day of
April, 2004

/sJoseph A. Nowick
Administrative Law Judge
Division of Hearings and Appeals
127/JAN