



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MDV-67/72055

PRELIMINARY RECITALS

Pursuant to a petition filed September 7, 2005, under Wis. Stat. §49.45(5) and Wis. Admin. Code §HA 3.03(1), to review a decision by the Waukesha County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on October 5, 2005, at Waukesha, Wisconsin. With the parties' consent, the hearing record was held open for seven days for submissions, which were received.

The issue for determination is whether the county agency correctly denied the petitioner's application for Institutional MA coverage ("card services" were approved) due to divestment of real property.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:
(petitioner)

By: Atty. Heather Poster
Becker & Hickey, S.C.
312 E. Wisconsin Ave., Suite 306
Milwaukee, WI 53202-4305

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: Kathleen Sampson, ES Spec.
Waukesha County Health & Human Services Department
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Waukesha County.

2. An Institutional MA application was filed on the petitioner's behalf on July 7, 2005. The county agency issued written notices of denial of Institutional/Long-Term Care MA on August 24 & 25, 2005. The petitioner was approved for "card services."
3. The agency's basis for denial was its determination that the petitioner committed a divestment when she sold her home to relatives on April 14, 2005. The agency determined that the divestment amount was \$82,700 (\$222,700 assessed value minus \$140,000 sale price), which resulted in a 16-month penalty period. With the exception of this divested amount, the petitioner was otherwise under the \$2,000 Institutional MA asset limit.
4. The petitioner entered the nursing home in November, 2003. In early 2003, she took out a \$107,491.25 reverse mortgage on her residence at (redacted) (residence). By March 1, 2005, the reverse mortgage proceeds had been exhausted to pay for the petitioner's care costs and expenses related to the home. When the nursing home was advised of this situation in 2005, its representative advised the petitioner's son-in-law that the petitioner had to get her assets under \$2,000, and that her home had to be sold promptly.
5. The residence was not listed with a realtor, and was not advertised as being for sale in any newspaper. In the months of March and April, 2005, two parties offered \$140,000 for the residence. One of the parties purchased the residence for \$140,000. (redacted) is the petitioner's granddaughter. The \$140,000 in proceeds was completely expended on the paying off of the reverse mortgage, a payment to the petitioner's pharmacy, and a payment to the petitioner's nursing home.
6. A January, 2003, appraisal done for the reverse mortgage approval valued the residence at \$185,000. That appraisal noted that the home required repair and remodeling. Exhibit C. In February, 2005, the petitioner's daughter viewed numerous generic real estate websites, and concluded that the residence's sale price would have to be steeply discounted to achieve a timely sale. In 2004, the City of New Berlin assessed the residence at \$222,700. The City's assessed valuation has not changed since 2002. The appraisal required by the bank in connection with the April 14, 2005, sale, yielded a valuation of \$225,000. That appraisal (Schliwa appraisal) noted that property values in the area have been increasing, and that marketing time to sell the property was estimated at less than three months. Exhibit 2.
7. The petitioner did not make substantial improvements to her residence between January, 2003, and the date of sale.
8. The purchaser of the residence put in significant personal labor to repair or improve the residence. She expended \$10,000 in supplies and materials on the residence after purchase. Exhibit H. The purchaser's listed repairs and improvements included interior repainting, carpet replacement, installation of new switch plate covers, cleaning a hardwood floor, replacement of some interior window treatments, replacement of several interior light fixtures, replacement of baseboards in one hallway and four rooms, replace three toilets and two bathroom sinks, replace flooring treatments in most of the house, reface the kitchen cabinets and replace the countertops, exterior repainting, a partial roof repair, and having an electrician review a possible short circuit in one hallway.

DISCUSSION

I. THE PETITIONER DIVESTED A PORTION OF AN ASSET WHEN SHE SOLD HER RESIDENCE FOR LESS THAN FAIR MARKET VALUE.

A divestment is a transfer of assets for less than fair market value. Sec. 49.453(2)(a), Wis. Stats.; *MEH*, 4.7.2.1. 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. Sec. 49.453(1)(f), Stats.; *MEH*, 4.7.3. 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” in the parlance). 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 (currently, \$5,096). *MA Handbook*, 4.7.5.

In this case, the agency maintains that the petitioner divested a portion of the value of her residence when she sold it in April, 2005. The agency assigned the assessed value of the property as its correct fair market value; it is my experience that this is a typical, neutral method used by county agencies throughout the state to arrive at a piece of real property’s value. Using the \$222,700 assessed value, the agency subtracted the undisputed \$140,000 sale price to arrive at a divested amount of \$82,700. When the \$82,700 divestment amount was divided by the average monthly cost of nursing home care, a 16-month penalty period (expiring August 1, 2006) resulted. The petitioner did not challenge the agency’s arithmetic in support of its position. I conclude that the agency’s determination was correct.

The petitioner’s main argument is that the residence was really only worth \$140,000 when it was sold in April, 2005. In support of this argument, she points to an appraisal from **January, 2003**, that valued the property at \$185,000. She asserted that she did not make improvements to the property prior to its sale, and I accept that assertion. However, the petitioner also asks me to believe that her property has deteriorated and been depreciated \$45,000 while vacant since November, 2003. There is nothing in the record to support that position, with the exception of a possible reference to a drainage problem in the yard.

On the other hand, the agency had a bank-requested appraisal from **March, 2005**, which assigned a value of \$225,000 to the property. The appraiser personally inspected the property. She did not observe that any structural or mechanical aspect of the 2,067 square foot, four-bedroom ranch home required replacement. This house was built in 1965 and was viewed as being in “average” condition. The appraiser noted, as a comparable home, a 2,020 square foot home built in 1952 that recently sold for \$229,000. See County Exhibit 2. An obvious explanation for the increase in value from the January, 2003, appraisal would be the significant rise in home sales prices both in Waukesha County and nationally. Given these well-publicized sale prices increases, it would not have been reasonable for the county agency to rely upon an appraisal from January, 2003. Finally, with respect to \$10,000 in redecorating and remodeling costs borne by the buyers, I note that the March, 2005, appraiser must have seen the outdated appearance of the property, but she still formed the belief that the property was worth \$225,000.

II. OTHER ARGUMENTS.

The petitioner advanced additional, alternative arguments (1) as why a divestment penalty should not be imposed here, and (2) why the agency should have calculated the divestment penalty on a smaller divested amount. The petitioner argues that no divestment penalty should be imposed per the following exceptions in the state code (echoed at *MEH*, 4.7.4):

(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. [n/a]
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 serious impairment to the institutionalized individual’s immediate health status exists.

Wis. Admin. Code §103.065(4)(d) (February, 2002).

The petitioner claims that she thought she was selling the residence for fair market value because of its “deteriorated” condition. First, the 2005 appraiser characterized this home as being in average condition. Further, even if the home needed more than redecorating, a 38% drop in price (from \$225,000) cannot be the fair market value for the property. Thus, I do not find the petitioner’s claim on this point to be credible.

Second, the petitioner claims that she was transferring the property *exclusively* for a purpose other than to qualify for MA. To the contrary, it is clear that she was selling the house precisely because she had formed the belief that the transfer was necessary to qualify for MA. This belief may have been encouraged by some potentially inaccurate advice from nursing home personnel, but that clearly was her belief.

Third, the petitioner argues that denial of eligibility until August, 2006, will work an undue hardship. There is no serious quarrel that the petitioner has significant medical problems, and that she should be in a nursing home. Her daughter is disabled by Parkinson’s Disease, and cannot care for her. However, that is not the end of the inquiry. (redacted) have asserted, without evidence, that they cannot afford to pay for the petitioner’s care; perhaps they are able to pay. Also, if the nursing home actually gave terrible advice to the petitioner regarding the handling of her assets, perhaps the nursing home should be asked to forgive some of the petitioner’s charges. Finally and perhaps most importantly, perhaps (redacted), who has benefited from the inappropriately low purchase price on her home, should place a mortgage on her home for the divested amount. In any event, I am not persuaded that all resources for coverage of the petitioner’s nursing home bill have been exhausted.

Finally, the petitioner argues that the agency incorrectly determined the divestment amount. She argues that the agency should have used the \$185,000 value from the January, 2003, appraisal instead of the \$222,700 property tax value, because an appraisal based on a personal inspection is more reliable than a property tax assessment. When the \$140,000 sale price is subtracted from \$185,000, the divestment amount is reduced to \$45,000, and the divestment penalty period would end on October 31, 2005. This argument might have held up a bit better if the March, 2005, appraisal did not exist. However, it does exist and it is the product of the qualified, personal inspection that was most proximate in time to the time of sale. Because the county agency’s \$222,700 figure did not exceed the March, 2005, appraisal amount, I conclude that the county agency used a reasonable fair market value figure in computing the divestment amount.

CONCLUSIONS OF LAW

1. The county agency correctly concluded that the petitioner divested \$82,700 when she sold her residence in April, 2005.
2. In arriving at the divested amount, the agency correctly determined that the petitioner's residence had a fair market value of \$222,700 at the time of sale.
3. The petitioner has not proved that she intended to transfer the residence for fair market value in April, 2005.
4. The petitioner has not proved that she divested her residence exclusively for a purpose other than qualifying for MA.
5. The petitioner has not proved that denial of MA eligibility will work an undue hardship because, among other things, it has not been established that the beneficiary of her divestment is unable to obtain a mortgage on the residence that will cover the divested amount.

NOW, THEREFORE, it is ORDERED

That the petition herein be 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 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 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 5th day of
December, 2005

/s/Nancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals
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