



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

In the Matter of

(petitioner)  
c/o Attorney Mary Beth Gardner  
2411 N Hillcrest Pkwy Suite 9  
Altoona, WI 54720

DECISION

MDV-18/72759

**PRELIMINARY RECITALS**

Pursuant to a petition filed October 18, 2005, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Eau Claire County Dept. of Human Services in regard to medical assistance, a hearing was held on December 5, 2005, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner divested an asset when she made a mortgage “irrevocable, non-saleable, non-transferable, non-assignable.”

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:  
  
(petitioner)  
c/o Attorney Mary Beth Gardner  
2411 N Hillcrest Pkwy Suite 9  
Altoona, WI 54720

Represented by:  
  
Mary Beth Gardner  
2411 N. Hillcrest Parkway  
Suite 9  
Altoona, WI 54720

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: Connie Thalacker, ESS  
Eau Claire County Dept Of Human Services  
721 Oxford Avenue  
PO Box 840  
Eau Claire, WI 54702-0840

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) resides in Eau Claire County.

2. The petitioner applied for medical assistance on September 8, 2005.
3. The petitioner was born on November 27, 1929.
4. On November 29, 1999, the petitioner's son and daughter-in-law signed a promissory note in which they agreed to pay the petitioner and her husband \$68,000 at the rate of 6% per year. Full payment or refinancing was to be made by December 31, 2004. *Exhibit 2*. The note was secured by a mortgage on non-homestead condominiums. *Exhibit 1*.
5. The only payment made on the note was for \$20,000 on November 29, 2002.
6. On August 30, 2005, the petitioner and her husband signed a refinancing agreement with their son and daughter-in-law. The value of the note was set at \$48,000, and the terms were that the son and daughter-in-law would pay \$532.90 each month at 6% annual interest for 10 years beginning on August 15, 2005. That agreement is secured by the "existing recorded mortgage." The new mortgage was "irrevocable, non-saleable, non-transferable, non-assignable." *Exhibits 3 and 4*.
7. The county agency considered the mortgage a divestment and determined that the petitioner was ineligible for institutional medical assistance for the nine months from August 1, 2005, though April 30, 2006.

### DISCUSSION

A person seeking medical assistance cannot have assets that exceed the program's limit, and she cannot reach this limit by divesting assets. A divestment occurs when an applicant, or a person acting on the applicant's behalf, transfers assets for less than their fair market value on or after the lookback date. Wis. Stat. §49.453(2)(a). The lookback date is generally 36 months, but is 60 months if a trust is involved. Wis. Stat. §49.453(1)(f). The lookback date for an institutionalized person begins on the first day that the person is both institutionalized and applies for medical assistance. Wis. Stat. §49.453(1)(f)1. Divesting assets renders recipients ineligible for medical assistance for the number of months obtained by dividing the amount of disposed assets over the asset limit by the statewide average monthly cost to a private-pay patient in a nursing home, which is now \$5,096. Wis. Adm. Code §HFS 103.065(5)(b); Wis. Stat. §49.453(3); *Medical Eligibility Handbook*, §4.7.5.

The petitioner applied for institutional medical assistance on September 8, 2005. Back on November 29, 1999, the petitioner's son and daughter-in-law had signed a promissory note in which they agreed to pay the petitioner and her husband \$68,000 at the rate of 6% per year. Full payment or refinancing was to be made by December 31, 2004. The note was secured by a mortgage on non-homestead condominiums, which was the property being sold. The petitioner's son and daughter-in-law paid \$20,000 on the note on November 29, 2002. On August 30, 2005, the petitioner and her husband signed a refinancing agreement with their son and daughter-in-law. The value of the note was set at \$48,000, and the terms were that the son and daughter-in-law would pay \$532.90 each month at 6% annual interest for 10 years beginning on August 15, 2005. The agreement made the note and mortgage "irrevocable, non-saleable, non-transferable, non-assignable."

The petitioner's attorney contends that the note was already "non-assignable, non-saleable, and non-transferable" under an addendum to the mortgage allegedly entered into on December 26, 2004. *Exhibit 5*. This she contends made the property and mortgage unavailable, which she also claims would eliminate the divestment penalty. This mortgage addendum has no effect on these proceedings because there is no evidence that it was ever in effect. It showed up for the first time at the hearing; it was not included in the papers the petitioner provided to the county agency before the hearing. Further, the August 30, 2005, agreement refers only to the "existing recorded mortgage," a mortgage recorded only once, on "November 29, 1999, "as document number 776306 in volume 1189 pages 490 – 492." Therefore, the only question is whether the petitioner divested an asset when the latest agreement was signed.

The *Medical Eligibility Handbook*, § 4.5.7.13, requires that mortgages held by a client be treated as land contracts. A land contract is generally an available asset. *Medical Eligibility Handbook*, § 4.5.7.12. This is because it can be sold and converted to cash to live upon. *Id.* When the petitioner made the mortgage “irrevocable, non-saleable, non-transferable, non-assignable,” she lost her right to convert it to cash to live upon. It is now unavailable to her. When an asset becomes unavailable, it is considered divested, as the county agency properly found. *Medical Eligibility Handbook*, §4.7.2.10.

I am aware that the note requires the petitioner’s son and his wife to make monthly payments to her, which is another way to provide a stream of money, but this is not an arm’s-length transaction, so there is nothing to ensure that these payments will occur. This is illustrated by the fact that when the new note was drafted the principal did not include any of the 6% interest that accumulated between November 1999 and August 2005, as it surely would have if the mortgage had been held by a disinterested party.

### **CONCLUSIONS OF LAW**

The county agency correctly determined that the petitioner was ineligible for institutional medical assistance for nine months when she made a mortgage unavailable.

**NOW, THEREFORE, it is ORDERED**

That the petition herein be and the same hereby is 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 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 Eau  
Claire, Wisconsin, this 12th day of  
January, 2006

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/sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals  
213/MDO