



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

DECISION

MDV/140936

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 10, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Marinette County Department of Human Services in regard to Medical Assistance, a hearing was held on June 19, 2012. At the request of the parties, the hearing was adjourned to allow the parties to locate and share further documentary evidence, and the hearing was ultimately concluded on June 10, 2012.

The issue for determination is whether the county agency correctly denied the petitioner's application for Medical Assistance due to a divestment of assets.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By: Mimi Guseck

Marinette County Department of Human Services  
Wisconsin Job Center Suite B  
1605 University Drive  
Marinette, WI 54143

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Marinette County.
2. Petitioner resided with her brother and sister-in-law between February, 2011, and December, 2011. While residing there, petitioner paid rent and reimbursed her brother for improvements made to the home to allow her to live there.
3. Petitioner's brother purchased a van to provide for petitioner's transportation needs. The vehicle is titled in the name of petitioner's sister-in-law.
4. Following a heart attack, the petitioner moved to [REDACTED] Home December 8, 2012, where she presently resides. She applied for Elderly, Blind & Disabled - Medical Assistance, seeking MA benefits effective January 1, 2012.
5. On January 26, 2012, the petitioner was issued a check in the amount of \$16,561.17, as a full distribution of an IRA account owned by petitioner. Exhibit 4, Correspondence from [REDACTED] Fidelity Brokerage Services, LLC. Petitioner gave those proceeds to her brother.
6. On April 16, 2012, the county agency issued a Negative Notice to the petitioner informing her that the agency had determined that she had divested the assets described in Finding of Fact #5, above, totaling \$16,561.17; that as a consequence she was ineligible for Medical Assistance between January 1, 2012 and March 17, 2012, and eligible for MA card services only, effective January 1, 2012. The Notice further stated that neither the petitioner nor her power of attorney signed the Promissory Note agreeing to borrow the funds; the note charged inadequate interest; and the note allows the maker to release any party liable which will result in forgiving a portion or the entire principal of the note. See, Exhibit 4.
7. On May 10, 2012, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the correctness of the divestment determination concerning the IRA distribution of January 26, 2012, and the penalty period.

**DISCUSSION**

A person seeking Medical Assistance is ineligible if her assets exceed \$2,000. Wis. Stat. § 49.47(4)(b)3g. In order to prevent those with enough funds to pay for their own medical care from becoming a burden to the general public by passing their assets to potential heirs, MA law prevents a recipient from reaching this limit by divesting assets. A divestment occurs when an applicant, or person acting on the applicant's behalf, transfers assets for less than their fair market value during the lookback period. The lookback period is generally 60 months. Wis. Stat. § 49.453(1)(f)(2m). Divesting assets renders recipients ineligible for MA for the number of months obtained by dividing the amount of disposed assets by the statewide average daily cost to a private pay patient in a nursing home. Wis. Admin. Code § DHS 103.065(5)(b); Wis. Stat. § 49.453(3); *see also, Medicaid Eligibility Handbook* § 4.7.5. This amount was then \$215.46 per day. *Medicaid Eligibility Handbook*, § 4.7.5. The county agency determined that the petitioner was ineligible for Medical Assistance for 76 days, beginning with January 1, 2012, because she divested \$16,561.17 in assets following her admission to [REDACTED] Home.

The petitioner concedes she gave the \$16,561.17 to her brother following the January 26, 2012 disbursement. However, she contends that this was provided to reimburse him and his wife for the home modifications and the van purchase/maintenance/insurance.

The *Medicaid Eligibility Handbook* addresses divestment as follows:

### **17.2.1 Divestment**

"Divestment" is the transfer of income, non-exempt assets, and homestead (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.
  
2. It is also divestment if a person takes an action to avoid receiving income or assets s/he is entitled to. Actions which would cause income or assets not to be received include:
  - a. Irrevocably waiving pension income.
  - b. Disclaiming an inheritance.
  - c. Not accepting or accessing injury settlements.
  - d. Diverting tort settlements into a trust or similar device.
  - e. Refusing to take legal action to obtain a court-ordered payment that is not being paid, such as child support or alimony.
  - f. Refusing to take action to claim the statutorily required portion of a deceased spouse's or parent's estate. Count the action as a divestment only if:
    - The value of the abandoned portion is clearly identified, and
    - There is certainty that a legal claim action will be successful.
 This includes situations in which the will of the institutionalized person's spouse precludes any inheritance for the institutionalized person. Under Wisconsin law, a person is entitled to a portion of his/her spouse's estate. If the institutionalized person does not contest his/her spouse's will in this instance, the inaction may be divestment.
  
3. The purchase of certain types of assets, even at the fair market value, may be considered a divestment, including :
  - a. The purchase of a life estate interest in another individual's home on or after January 1, 2009, is a divestment unless the purchaser resides in the home for a period of at least 12 consecutive months after the date of purchase. See 17.10.3 Purchase of a Life Estate in the Home of Another Person.
  - b. The purchase of a promissory note, loan or mortgage, on or after January 1, 2009 is a divestment unless such note, loan or mortgage meets several criteria. See 17.12.2 Promissory Notes On or After 01/01/09.
  - c. The purchase of certain annuities may be considered a divestment. See 17.11.2 Annuities Purchased On Or After 01/01/09 Or Had Transactions To Them On Or After 01/01/09.

*Medicaid Eligibility Handbook*, §17.2.1.

The agency acted to deny the application for Elderly, Blind & Disabled - MA for the reasons stated in Finding of Fact #6, above.

Based upon the evidence presented in this action, I can only conclude that the disbursement of the IRA proceeds constituted a divestment. Petitioner's representatives have conceded that there was no written agreement documenting the purpose behind petitioner's payment of the IRA proceeds to her brother. Further clouding the petitioner's version of events is the fact that the disbursement occurred almost two months following petitioner's move to Luther Home. The county agency appears to have given petitioner every benefit of the doubt in allowing for offsets for home modifications, transportation costs, food purchases, and rent payments; in many cases the lack of documentation was supplanted by taking petitioner and her representatives at their word.

The petitioner argues that much of the IRA proceeds were intended to be provided to petitioner's brother to reimburse him for the van purchase/repairs/insurance. While I do not doubt that the van was purchased for the petitioner, the van was purchased in the name of petitioner's sister-in-law. When petitioner's brother was asked at hearing about what would happen to the proceeds of the future sale of the van, he was unable to clearly answer. When directly asked whether the proceeds for the van sale would belong to his sister (petitioner), he responded that he would happily give them to her. While I found his response genuine, it also indicates to me that her brother believes that he and his wife own the van (which, literally, they do). It also indicates to me that there was no preordained understanding or intention to provide his sister with the proceeds from the sale of the van. As such, I am unable to find that the parties' intended that the IRA disbursement was intended, in part or in whole, as a reimbursement for the van.

I do not want to convey the impression that the petitioner's brother and/or his wife have done anything untoward in this matter. To the contrary, I find that the petitioner's family has acted with extreme selflessness in taking in the petitioner, modifying their home to accommodate her needs, and interrupting their lives to provide her with comfort and care. Unfortunately, the petitioner's attempt to convey her assets to her brother run afoul of the rules governing MA benefits and divestments.

I have reviewed the respondent's calculations and have found no error. Additionally, the record before me properly establishes a divestment of the petitioner's IRA proceeds. The penalty period of 76 days established by the respondent is proper and in accordance with MA laws and regulations.

#### **CONCLUSIONS OF LAW**

- 1) That the county agency has correctly determined that the transfer by the petitioner of \$16,561.71 to her brother was a divestment.
- 2) That petitioner is ineligible for Long Term Medicaid from January 1, 2012 through March 17, 2012, as a result of the divestment.

**NOW, THEREFORE, it is**

**ORDERED**

The petition is hereby dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge 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.

To ask for a rehearing, 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 for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be 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 with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,  
Wisconsin, this 10th day of September, 2012

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/s/Peter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals

c:

