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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████
██████████

DECISION
Case #: MDV - 211510

PRELIMINARY RECITALS

Pursuant to a petition filed on December 27, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Lafayette County Department of Human Services regarding Medical Assistance (MA), a hearing was held on February 7, 2024, by telephone.

The issue for determination is whether the agency correctly determined a divestment in the amount of \$71,594.42 with a penalty period of 232 days.

At the time of hearing, the agency indicated that it had determined that the appropriate divestment amount was actually only 50% of the amount stated on the 12/18/23 notice. The petitioner maintained that it disputed the correctness of the divestment determination but conceded that if the divestment was upheld then the amount was not in dispute.

Following the evidentiary hearing, but prior to the issuance of a decision, the petitioner passed away.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████
██████████

Petitioner's Representative:

Attorney John Sauer
Kittelsen Law Firm

Respondent:

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

By: M. Zasada

Lafayette County Department of Human Services
PO Box 130
Darlington, WI 53530

ADMINISTRATIVE LAW JUDGE:
John Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. In 2010 petitioner and his wife transferred their farm to their children and reserved a life estate which was to extinguish upon the death of the first spouse. The deed granting the property interest and reserving the life estate was filed in Lafayette County on 1/6/10.
3. Petitioner was enrolled in long-term care Medicaid as of March 2019.
4. Petitioner's spouse, [REDACTED], was the community spouse.
5. On 10/17/23 the petitioner underwent a renewal signed by both himself and [REDACTED].
6. The agency began verifying the statements for renewal.
7. On 11/1/23 the agency was informed of [REDACTED]'s passing on 10/25/23.
8. As the agency was reviewing the verifications it learned of property taxes paid on a property of which it was not aware. The agency added the property into the renewal and the Medicaid case closed due to the petitioner being over the asset limit.
9. On 11/10/23 petitioner's son contacted the agency and explained that the property was a life estate.
10. The agency determined that the property transferred to the children upon [REDACTED]'s death including petitioner's life estate and the agency found the transfer to be a divestment.

DISCUSSION

When an individual, the individual's spouse, or a person acting on behalf of the individual or his spouse, transfers assets at less than fair market value, the individual is ineligible for MA coverage of nursing facility services. 42 U.S.C. 1396p(c)(1)(A); Wis. Stat., §49.453(2)(a); Wis. Admin. Code, §DHS 103.065(4)(a); Medicaid Eligibility Handbook MEH § 17.2.1. The penalty period is the number of days determined by dividing the value of property divested by the average daily nursing home cost to a private pay patient. MEH § 17.5.2. A determination of a divestment is limited to the "look back period" which is the 60 months prior to the month of application for MA. *Medicaid Eligibility Handbook* Section 17.2.2.1

A divestment that occurred in the look back period, or any time after does not affect eligibility if the person who divested can show that the divestment was not made with the intent to qualify for Medicaid. MEH § 17.2.6.1. There must be evidence that shows the specific purpose and reason for making the transfer and establish that the resource was transferred for a purpose other than to qualify for Medicaid. The individual's intent must be evaluated on a case-by-case basis to determine whether a divestment occurred. *Id.*

There are several issues that were raised in this case but the first issue that must be resolved is whether the agency correctly determined that there was a divestment concerning the life estate. In this case, the property interest was granted to the children by deed filed in 2010. The life estate was reserved at that time.

The provision cited by both petitioner and the agency as controlling in this case is Medicaid Eligibility Handbook Section 17.2.7.10 which states:

17.2.7.10 Life Estate – Transferring the Property for Less Than FMV

The transfer of property originally owned by a life estate holder to a remainder person without receiving FMV is an unallowable divestment and results in a penalty period.

The divested amount is the FMV of the property at the time of the transfer minus the life estate value. To determine the life estate value, multiply the FMV of the property by the number from the 39.1 LIFE ESTATE AND REMAINDER INTEREST table corresponding to the age of the life estate holder at the time the property was transferred.

<p>Example 6:</p>	<p><i>Marion, age 83, gave her home to her son John, retaining a life estate. The FMV of the house at the time of the transfer was \$87,000. Two years later, Marion applied for Long Term Care Medicaid. Since the transfer of her home occurred in the look back period, it is an unallowable divestment and results in a penalty period. The worker must determine the divestment amount and penalty period. The divestment amount is the FMV of the house at the time of transfer, minus the life estate value.</i></p> <p><i>To determine the life estate value, multiply \$87,000 by .38642 (the number from <u>39.1 LIFE ESTATE AND REMAINDER INTEREST</u> table that corresponds to Marion’s age, 83, at the time of transfer).</i></p> <p><i>Marion is the life estate holder. John is the remainder person.</i></p> <p><i>The divested amount is \$87,000 - \$33,618.54 = \$53,381.46.</i></p>
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I agree that this provision applies to the granted of the property to the children. But, this provision considers the transfer of the remainder interest at the time of the transfer which occurs when the deed is recorded. This provision is not written to find a transfer upon extinguishment of a life estate. No property interest transfers when a life estate is extinguished. The reserved interest merely ends. Applying this provision makes it clear that there is no divestment because the transfer did not occur during the look back period. The transfer occurred when the deed was recorded in 2010. Petitioner did not apply for MA until 2019. There was no divestment.

Furthermore, as an aside, even if there were a divestment, the divestment amount would only be based on the amount of the fair market value of the property in 2010.

CONCLUSIONS OF LAW

The transfer of property under the 2010 deed did not occur during the look back period.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instruction to reverse the finding of a divestment related to the 2010 deed and reserved life estate. This action shall be completed within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

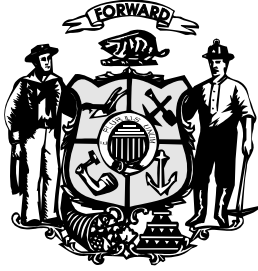
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 5th day of April, 2024



John Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 5, 2024.

Lafayette County Department of Human Services
Division of Health Care Access and Accountability
Attorney John Sauer