



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MDV-50/105

459

PRELIMINARY RECITALS

Pursuant to a petition filed July 09, 2009, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Price County Department of Social Services in regard to Medical Assistance, a hearing was held on September 01, 2009, at Phillips, Wisconsin.

The issue for determination is whether the petitioner's assets made him ineligible for medical assistance in January 2009.

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 53702

By: Dawn Anderson, ESS

Price County Department of Social Services
PO Box 88
Normal Bldg., 104 S. Eyder Avenue, Rm. 1
Phillips, WI 54555

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien, Attorney
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) resides in Price County.
2. The petitioner applied for medical assistance on April 27, 2009, requesting eligibility retroactive to January 1, 2009.
3. On January 13, 2009, the petitioner's daughter had closed his bank account and transferred its \$7,064.85 into an account in her name so that she could pay his bills.
4. The county agency determined that the transfer was a divestment that left the petitioner ineligible for medical assistance for 34 days.
5. When the transferred money is considered, the petitioner's assets exceeded \$2,000 until after January 2009.

DISCUSSION

Medical assistance eligibility can be made retroactive to "the first day of the month 3 months prior to the month of application." Wis. Adm. Code § DHS 103.08(1). A person cannot receive institutional medical assistance if his assets exceed \$2,000. *See* Wis. Stat. §§ 49.46(1) and 49.47(4). Generally, a person cannot reach this limit by giving away his assets. This is considered a divestment, which occurs when a person seeking medical assistance "disposes of resources at less than fair market value." Wis. Adm. Code, § DHS 103.065(4)(a). If the person improperly divests his assets, he is ineligible for institutional medical assistance for the number of months obtained by dividing the amount given away by the statewide average monthly cost to a private pay patient in a nursing home at the time he applied. Wis. Adm. Code, § DHS 103.065(5)(b). However, a divestment does not make a person ineligible if the "resource was transferred exclusively for some purpose other than to become eligible for MA." DHS 103.065(4)(d)2.b.

The petitioner applied for medical assistance on April 27, 2009, requesting eligibility retroactive to January 1, 2009. On January 13, 2009, his daughter had closed his bank account and transferred the \$7,064.85 in it into an account in her name so that she could pay his bills. The county agency determined that this transfer was a divestment that left the petitioner ineligible for medical assistance for 34 days. I disagree because the money was not transferred to make the petitioner eligible for medical assistance. However, he must still show that his assets did not exceed \$2,000, and if the transferred funds are not considered a divestment, they remain attributed to him. His daughter submitted bank records showing that she did not pay any of the petitioner's bills until February 2009. Although the petitioner probably had enough bills in January to bring his assets below \$2,000, debts are not subtracted from assets when determining medical assistance eligibility. Therefore, I find that although the petitioner did not divest assets, he was ineligible for medical assistance in January 2009.

CONCLUSIONS OF LAW

1. The petitioner did not improperly divest funds when he transferred the money in his bank account to his daughter's account because he did not do so to become eligible for medical assistance.
2. The petitioner was ineligible for medical assistance in January 2009 because his assets exceeded \$2,000 that month.

ORDERED

That the petitioner's appeal is 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 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. Appeals must be served on the Office of 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 53702

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 Eau Claire, Wisconsin, this _____ day of _____, 2009

Michael D. O'Brien, Attorney
Administrative Law Judge
Division of Hearings and Appeals

c:

