



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

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In the Matter of

(petitioner)

DECISION

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MDV-40/68902

**PRELIMINARY RECITALS**

Pursuant to a petition filed March 18, 2005, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Milwaukee County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on May 12, 2005, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner divested her home to become eligible for MA.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Represented by:

John E. Talsky  
Pyramax Bank Building  
7001 W. Edgerton Avenue  
Greenfield, WI 53220

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: Karla Fajembola, ES Supervisor  
Milwaukee County Dept Of Human Services  
1220 W. Vliet St, 2Nd Floor  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Joseph A. Nowick  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Milwaukee County. She has been certified for MA since at least October, 2002.
2. The petitioner had been living in her own home until she moved to OC Assisted Living Center in July, 2004.
3. Prior to that move, the petitioner lived in the same home with her son and his spouse. They provided care for the petitioner so that her entry into OC was significantly delayed. The living

arrangement existed for at least the two years immediately prior to the petitioner's move. Her physician verified this in a notarized statement. (See Exhibit #1.)

4. In August, 2004, petitioner quit claimed her home with a net value of \$54,762 to her son.
5. On March 9, 2005, the county agency sent a notice to the petitioner stating that she was ineligible for MA for a period of 8 months, starting on September 1, 2004 and ending on May 31, 2005, due to a divestment of assets. Benefits were continued pending this hearing.

### DISCUSSION

A divestment is a transfer of assets for less than fair market value. Wis. Stat. Sec. 49.453(2)(a); *MA Handbook*, Appendix 14.2.1. 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. Wis. Stat. Sec. 49.453(1)(f); *Handbook*, App. 14.3.0. 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 Wis. Stat. Sec. 49.453(3) to be the number of months determined by dividing the value of property divested by the average monthly cost of nursing facility services. *MA Handbook*, Appendix 14.5.0. In this case, the agency calculated a divestment of \$54,762, with a disqualification period of 8 months, starting on September 1, 2004 and ending on May 31, 2005.

It was undisputed that petitioner transferred a home with a net value of \$54,762 to her son while she was certified for MA. The parties are also in agreement as to the length of the ineligibility period that would ensue if the transfer were a divestment. The evidence and testimony admitted during the hearing demonstrate that petitioner's son did not pay anything in return for the home. Thus, the only remaining issue is whether the transfer of petitioner's home to her son met an exception to the divestment rules.

One exception to the divestment rules exists if the institutionalized person or his spouse divests homestead property to:

d. A minor or adult child of the institutionalized person. The child must have

- Been residing in the person's home for at least 2 years immediately before the person became institutionalized, and
- Provided care to him/her which permitted him/her to reside at home rather than in the institution, or which permitted him/her to avoid becoming a community waivers participant. This care must have been provided for the entire 2 years immediately before the person became institutionalized. Get a notarized statement that the person was able to remain in his/her home because of the care provided by the child.

The statement must be from his/her physician or from someone else who has personal knowledge of his/her living circumstances. A notarized statement from the child does not satisfy these requirements.'

See the *Wisconsin Medicaid Eligibility Handbook*, §4.7.4. See also Wis. Admin. Code §HSS103.065(4)(b). Petitioner's son, who was the grantee of the home in question, testified that he resided in the home for at least 2 years prior to his mother's going to Oak Crest. He also testified that he and his wife had provided care for his mother in the form of cooking, washing of clothes, personal cares and other caretaker tasks. An affidavit was submitted from the petitioner's doctor stating that the

petitioner would have had to go into an institution much earlier had the son not provided the care in question. See Exhibit #1.

The overall testimony and documentation presented at hearing support a conclusion that: 1) the petitioner's son resided with the petitioner in the home for at least 2 years, 2) that the petitioner's son provided care to petitioner that allowed her to reside in the home rather than in the institution, and 3) that the care was provided in the home for the entire 2 years immediately before petitioner became institutionalized. The criteria for the above-described exception to the divestment rules were met in this case.

### **CONCLUSIONS OF LAW**

The petitioner's transfer of her home to her son falls within an exception to the divestment rules.

**NOW, THEREFORE, it is**

### **ORDERED**

That the petition herein be remanded to the county agency with instructions to remove the divestment from the petitioner's case and continue her certification for MA, if she is otherwise eligible. This is to be done within 10 days of the date of this Decision.

### **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  
Madison, Wisconsin, this 18th day of  
May, 2005

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/s/ Joseph A. Nowick  
Administrative Law Judge  
Division of Hearings and Appeals  
67/JAN

Worker #: 9421 Location: MILW-GALENA