



STATE OF WISCONSIN  
DEPARTMENT OF HEALTH & SOCIAL SERVICES

In the Matter of

[REDACTED]

DECISION

MDV-68/86274

P R E L I M I N A R Y R E C I T A L S

Pursuant to a petition filed January 19, 1995, under sec. 49.45(5), Wis. Stats., to review a decision by the Waupaca County Dept. of Social Services to terminate Medical Assistance (MA) eligibility, a hearing was held on February 8, 1995, at Waupaca, Wisconsin. At the request of the petitioner, the record was held open for 15 days for submission of additional information.

The issue for determination is whether the petitioner has divested real estate making her ineligible for MA.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Wisconsin Dept. of Health & Social Services  
Bureau of Welfare Initiatives  
1 W. Wilson St., Room 350  
P.O. Box 7851  
Madison, WI 53707-7851  
By: Kathy Hurt, ESS  
Carla Hales, ESS  
Waupaca County Dept. of Social Services  
811 Harding  
Waupaca, WI 54981

EXAMINER:

Kenneth P. Adler, Attorney  
Department of Health & Social Services

F I N D I N G S O F F A C T

1. The petitioner (SSN: [REDACTED], CARES No. [REDACTED]) is a resident of Waupaca County.
2. The petitioner has been on MA through Waupaca County since June 1, 1989. At the time of the application, her husband resided on the homestead farm, located in Outagamie County, making the petitioner eligible for MA as spousal impoverishment case. The homestead where her husband resided was considered exempt property for MA eligibility purposes.
3. On October 6, 1994 the petitioner's husband [REDACTED] underwent cancer surgery. He was then transferred to [REDACTED] Care Center on October 20, 1994. On November 6, 1994 [REDACTED] was sent home. He remained there until he was admitted to [REDACTED] Care Center to reside with the petitioner.
4. On November 18, 1994 the petitioner and her husband sold the homestead farm to their son, [REDACTED] for \$60,000 - less a \$23,450 "downpayment." This downpayment represented improvements which had been made on the farm by [REDACTED] over the years. Therefore, the purchase price was \$31,550, and [REDACTED] paid \$5,000 down and planned to pay \$5,000 a year, payable November of each year. This was effectively a land contract purchase.
5. The county agency views the \$23,450 deduction from the purchase price as a divestment of that amount.
6. At the time of the sale, [REDACTED] still resided on the farm. During December, 1994 he was hospitalized and in January, 1995 he moved to the nursing home where the petitioner resides.
7. As the farm was sold on a land contract for \$31,550, the petitioner and her husband exceed the asset limits for MA eligibility.
8. The petitioner's MA was terminated effective January 31, 1995 based upon excess assets.

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D I S C U S S I O N

The Sale of the Farm under a Land Contract

When a person sells property by land contract, the legal title to the property is a legal interest in it. If available, it can be sold and converted to cash for support and maintenance. Under Wisconsin law, a valid land contract operates to transfer equitable ownership immediately, although the seller retains title as security for the purchase price. U.S. v. Givosky, 349 F.Supp 1200 (D.C. Wis. 1972). Land contracts are viewed as security devices under which the buyer of the property under the contract is the owner unless and until the buyer's interest is foreclosed. Matter of Patch Graphics, 32 B.R. 373.

To determine the value of the seller's interest in the land contract, county agencies are instructed to: (1) determine the original value of the land contract through the sale price or the fair market value as determined by a qualified real estate broker; and (2) subtract payments the purchaser has made on the principle, and encumbrances on the contract. The remainder is the value of the seller's

interest in the land contract. This then is to be counted as an asset if it is available. MA Handbook Appendix 11.6.11.

An asset is considered available when: (1) it is actually available; (2) a person has a legal interest in the liquidated sum; and (3) the person has the legal ability to make the sum available for support and maintenance. MA Handbook, Appendix 11.1.0.

Homestead property is considered exempt from an asset determination as long as the spouse of an applicant who resides in an institution continues to live in the home. MA Handbook, Appendix 11.7.3. However, money from the sale of homestead property is considered an asset. The proceeds from the sale of homestead property may be disregarded if placed into an escrow account and used to purchase another home within 3 months.

In this particular case, the petitioner's husband resided on the farm at the time of the sale. Therefore, the property was exempt but once sold the proceeds had to be considered assets available to the petitioner. The proceeds from the sale were not placed into an escrow account and therefore must be considered as assets available for support and maintenance. As indicated above, the \$31,550 received for the property exceeds the MA asset limit and therefore the county correctly sought to terminate MA eligibility.

However, it is also necessary to determine whether the petitioner and her husband divested \$23,450 when they sold the farm to their son for less than the fair market value.

Was the Sale of the Farm to the Petitioner's Son a Divestment?

Section 49.45(17), Wis. Stats. provides as follows:

DIVESTMENT. (b) Except as provided in par. (d), all of the following are ineligible under medical assistance for nursing facility services, for a level of care in a medical institution equivalent to that of a nursing facility and for services under a waiver under 42 USC 1396n for the period beginning with the month in which the resources were transferred: . . .

2. An institutionalized individual if, during the 30 months immediately before the date that he or she applies for medical assistance or at any time thereafter, the institutionalized individual or his or her spouse, as defined in s. 49.47(2)(c), disposes of resources for less than fair market value.

(d) Paragraphs (b) and (c) do not apply to transfers of resources exempt under 42 USC 1396p(c)(2) or if the department determines that application of pars. (b) and (c) would work an undue hardship. The department shall promulgate rules concerning the transfer of resources exempt under 42 USC 1396p(c)(2). (emphasis added)

Pursuant to the above directive, the department has promulgated the following rules concerning the transfer of resources exempt under 42 USC 1396p(c)(2):

Section 103.065, HSS Wis. Adm. Code provides, in relevant part, as follows:

(3) DEFINITIONS. In this section: . . . (b) "Institutionalized individual" means an applicant or recipient who is an inpatient in an SNF or ICF . . .

(4) DIVESTMENT (a) Divestment resulting in ineligibility. An institutionalized individual or someone acting on behalf of that individual who disposes of resources at less than fair market value . . . if the individual is not receiving MA on that date, within 30 months immediately before or at any time after the date the individual applies for MA while institutionalized, shall be determined to have divested. A divestment results in ineligibility for MA for the institutionalized individual unless made to an exempt party under par. (b) or (c) or when one of the circumstances in par. (d) exist.

(b) Permitted divestment to an exempt party - homestead property. Transfer of homestead property at less than fair market value is not divestment resulting in ineligibility under this section if the individual transferred title to the homestead property to:

1. The spouse of the institutionalized individual . . . ;
2. A child of the institutionalized individual who is under age 21 or who meets the SSI definition of total and permanent disability or blindness under 42 USC 1382c;
3. A sibling of the institutionalized individual . . . ;
4. The child, other than a child described in subd. 2, of the institutionalized individual who was residing in the institutionalized individual's home for a period of at least 2 years immediately before the date the individual became an institutionalized individual and who provided care to the institutionalized individual which permitted him or her to reside at home . . .

(d) Circumstances under which divestment is not a barrier to eligibility. An institutionalized individual who has been determined to have made a prohibited divestment under this section shall be found ineligible for MA . . . unless:

1. The transfer of property occurred as the result of a division of resources as part of a divorce or separation action, the loss of a resource due to foreclosure or the repossession of a resource due to failure to meet payment; or

2. It is shown to the satisfaction of the department that one of the following occurred:

- a. The individual intended to dispose of the resource either at fair market value or for other valuable consideration;
- b. The resource was transferred exclusively for some purpose other than to become eligible for MA;
- c. The ownership of the divested property was returned to the individual who originally disposed of it; or
- d. The denial or termination of eligibility would work an undue hardship. In this paragraph "undue hardship" means that a serious impairment to the institutionalized individual's immediate health status exists.

(emphasis added)

In this particular case, the elements for making a permitted divestment under sub. 4(b) above have not been satisfied. Also, the petitioner has not argued that the circumstances under 4(d)(2) above exist in this case. Therefore, the sale of the property for \$23,450 less than fair market value must be considered a divestment.

At hearing the petitioner's son testified that he and his family's lawyer had determined the purchase price based upon the estimated fair market value. However, as the son had spent approximately \$23,450 on his parents farm over the years for maintenance and repairs, that amount was subtracted from the purchase price to reflect payment to the petitioner's son for those services.

The petitioner's son is asserting that the purchase price was reduced to reflect the value of services his parents received. MA Handbook, Appendix 14.2.9 defines "value received" as the amount of money or value of any property or services received in return for the person's property. The value received may be in any of the following forms:

Services which shall be assigned a valuation equal to the cost of purchase on the open market. Assume that services and accommodations provided to each other by family members or other relatives were free of charge, unless there exists a written contract (made prior to the date of transfer) for payment.

The time and money spent on the farm by the petitioner's son no doubt maintained and perhaps increased its value. [REDACTED] repaired machinery, maintained buildings, constructed a new shed and generally helped with upkeep. Whether or not he was to be paid for those services was between he and his parents. There was, however, no written agreement between them indicating a payment for these services prior to the date of the transfer of property.

Based upon all of the above, I must conclude the \$23,450 reduction in the purchase price of the farm represented a divestment of that amount.

C O N C L U S I O N S O F L A W

1. That the sale of the petitioner's farm placed her over the MA asset limit.
2. That the reduction in the purchase price of the farm below the fair market value to reflect maintenance and improvement over the years was a divestment of that amount.

NOW, THEREFORE, it is

O R D E R E D

That the petition for review herein be and the same is hereby 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 Office of Administrative Hearings, 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.

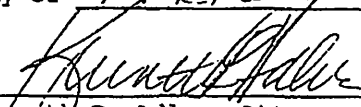
Your request for a new hearing must be received no later than 20 days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in Sec. 227.49 of the state statutes. A copy of the statutes can be found at your local library or courthouse.

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). The appeal must be served on the Department of Health and Social Services as respondent, P. O. Box 7850, Madison, WI 53707-7850.

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 3rd  
day of FEBRUARY, 1995.

  
Kenneth P. Adler, Attorney  
DEPARTMENT OF HEALTH & SOCIAL SERVICES  
2/24/95kpa

cc: Petitioner . . .

Waupaca Co. DSS