



STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS

the Matter of

DECISION

[REDACTED]

MDV-13/10761

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

Pursuant to a petition filed December 17, 1996, under sec. 49.45(5), Wis. Stats., to review a decision by the Dane County, Dept. of Human Services to deny Medical Assistance (MA) eligibility, a hearing was held on January 8, 1997, at Madison, Wisconsin.

The issue for determination is whether the petitioner has divested some of the value of non-homestead real estate making him ineligible for MA.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Department of Health and Family Services  
Bureau of Welfare Initiatives  
1 W. Wilson St., Room 350  
P.O. Box 7851  
Madison, WI 53707-7851  
By: Kathy Keller, ES Supervisor  
1819 Aberg Avenue, Suite D  
Madison, WI 53704

EXAMINER:

Gary M. Wolkstein, Attorney  
Division of Hearings and Appeals

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

1. The petitioner (SSN: [REDACTED] CARES No. [REDACTED] has been a resident of the [REDACTED] in Dane County since June 17, 1996. The petitioner's wife and guardian, [REDACTED], continues to reside in their home at [REDACTED].
2. On October 8, 1996, petitioner's wife filed on behalf of the petitioner an application for Medical Assistance (MA). See Exhibit 1.
3. Before September 30, 1996, the petitioner and his wife jointly owned non-homestead property at [REDACTED]. The 1996 fair market value (FMV) of that property was \$96,000. See Exhibit 3. On September 30, 1996, the [REDACTED] property was transferred by guardian's deed from the petitioner solely to his wife, [REDACTED]. See Exhibit 4. Also on September 30, 1996, [REDACTED] sold the property to her daughter, [REDACTED], for a price that was \$20,590 under the FMV of \$96,000. See Exhibit 5.
4. The county agency sent a November 7, 1996 negative notice to the petitioner stating his application for MA was denied because petitioner sold non-homestead property to his daughter for \$20,590 less than fair market value. The notice also stated this act results in a divestment penalty of six months from September, 1996, the settlement date. See Exhibit 2.
5. [REDACTED] has lived in the [REDACTED] since 1978.

### D I S C U S S I O N

A disqualifying divestment occurs for MA purposes when an institutionalized individual, his/her spouse, or a person acting on his/her behalf disposes of nonexempt property for less than fair market value. Sec. 49.45(453), Wis. Stats., SHSS 103.065(4), Wis. Adm. Code, MA Handbook, Appendix 14.2.2. "Disposal" is defined in the Handbook as "the act of changing legal title or other right of ownership to another person or persons." Id. If a divestment occurs, the individual is ineligible for MA for the number of months obtained by dividing the disposed amount by the statewide average monthly cost to a private pay patient in a nursing home. SHSS 103.065(5)(b), Wis. Adm. Code.

In a Fair Hearing such as this, the petitioner has the burden of proof to establish that a denial action taken by the county, like the denial of MA due to divestment of assets in excess of program limits within the 30 months prior to application, was improper given the facts of the case. See, 20 C.F.R. 416.200-416.202; see also, 42 C.F.R. §435.721(d).

In this case, the petitioner must establish, by a preponderance of the evidence submitted at the hearing, that the county denial due to the petitioner's alleged \$20,590 divestment at the time of the sale of the [REDACTED] property was incorrect because the reduction in the price of the property was not divestment.

As to the \$20,590 credit on Exhibit 5, [REDACTED] argues that for many years prior to the October, 1996 application for MA, [REDACTED] paid for repairs to and improvement on the [REDACTED] Street property. [REDACTED] further contended

that [redacted] "rented" the property from her parents with the intent to purchase the property in the future. [redacted] testified that she made the payments for repairs and improvements on the property to create a "downpayment" on the property at a future time when she could purchase the property from her parents. Consequently, [redacted] argues value was received for the \$20,590 reduction in price as a "discharge of a debt", and this sum was therefore not a divestment. Medical Assistance Handbook, Appendix 14.2.9(3).

The county agency's response to this assertion is that [redacted] prior expense payments on the property were repeated gifts occurring throughout the years, and that there is no documentation before August 19, 1996 (less than two months before petitioner's MA application) to substantiate any kind of debt or contract between [redacted] and [redacted] and their daughter.

The MA Handbook provides as follows:

"Value received" is 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:

1. Cash.
2. Other assets such as accounts receivable and promissory notes (both of which must be valid and collectible to be of value), stocks, bonds, and both land contracts and life estates which are evaluated over an extended time period.
3. Discharge of a debt.
4. Prepayment of a bona fide and irrevocable contract such as a mortgage, shelter lease, loan, or prepayment of taxes.
5. 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.

MA Handbook, App. 14.2.9.

[redacted] testified that she paid for the improvements in the property as stated in Exhibit 6. [redacted] also stated that she paid for the repairs and improvements over the years because she wanted to buy the home at some point and believed those payments would be considered "equity". However, both [redacted] and her daughter admitted that there was no written agreement or contract between [redacted] and her parents regarding [redacted]'s obligation to pay for any improvements or repairs on the [redacted] Street property. At the hearing, [redacted] offered an August 19, 1996 agreement between [redacted] and her mother, but explained that this agreement was drafted for the purpose of [redacted] obtaining a bank loan for the remaining sale price of \$76,000. See Exhibit 5. There was also no testimony or evidence in the record that [redacted] had an oral agreement with her parents that she would be compensated for all of her payments at a later time.

As proof of this alleged "discharge of a debt", petitioner offered Exhibit 6, which contained the August 19, 1996 agreement and the list of alleged home improvement purchases by [REDACTED] for the home. However, the petitioner did not provide any documentation in the form of check stubs or any other receipts to establish the date or amount of each item allegedly purchased for the house. Further, the petitioner alleged that [REDACTED] has paid rent to her parents since she began living in the home about 1978. However, there was no evidence presented in the record to establish the amount of those monthly rental payments during the period of 1978 until the date [REDACTED] purchased the property on September 30, 1996. The concern is that even if [REDACTED] did pay rent to her parents, those rental payments may have been irregular or substantially under the fair market value (FMV) for renting a home with a current value of \$96,000. Perhaps, during the months in which [REDACTED] paid for improvements to the house, her parents made accommodations in the amount of rent which [REDACTED] needed to pay. The above are simply questions relevant to the issue at hand that were not answered by the petitioner.

The MA Handbook provides in pertinent part:

5. 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.

MA Handbook, App. 14.2.9.

Since there are no dates associated with the list of items allegedly purchased by [REDACTED] (Exhibit 6), it is impossible to know if any of the items may have been purchased after the August 19, 1996 agreement was signed. In any case, I did find the testimony of [REDACTED] credible as to the fact that she expended some funds to make improvements on the house, and that she may very well have intended over the years to purchase the home at some future time. However, there was not a written contract or agreement before August, 1996. Furthermore, there also was not even a clear oral agreement between [REDACTED] and her parents during the 19 years that she lived in her parents' non-homestead home. The petitioner has the burden of proof to establish that a denial action taken by the county, like the denial of MA due to divestment of assets in excess of program limits within the 30 months prior to application, was improper given the facts of the case. For all of the above reasons, the petitioner has not met that burden. I conclude that the petitioner has failed to present sufficient probative evidence which establishes, by the preponderance of the evidence presented, that the county agency MA denial action was incorrect.

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

- 1) The county agency correctly concluded that the petitioner divested \$20,590 to her daughter in the sale of their non-homestead property, and that \$20,590 was a countable asset for MA eligibility purposes at the time of application.
- 2) The county agency correctly denied the petitioner's October 8, 1996 MA application due to divestment.

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 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 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.

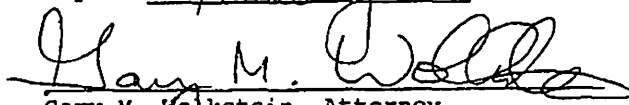
APPEAL TO COURT

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 Family Services, 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 19th  
day of February, 1997.

cc: Petitioner  
Dane County

  
Gary M. Wolkstein, Attorney  
Division of Hearings and Appeals  
2-17-97gw