



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MDV-71/#35825

PRELIMINARY RECITALS

Pursuant to a petition filed July 28, 1998; under sec. 49.45(5), Wis. Stats, to review a decision by the Wood County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on August 26, 1998, at Wisconsin Rapids, Wisconsin

The issue for determination is Whether the county agency correctly determined that the petitioner was ineligible for MA due to a divestment of assets

There appeared at that time and place the following persons:

PARTIES IN INTEREST

Petitioner

[REDACTED]

Petitioner's Representative

By [REDACTED]
Same As Petitioner's Address

Wisconsin Department of Health and Family Services
P O Box 7850
Madison, WI 53707-7850

By Norma Gables, ESS
Wood County Dept Of Social Services
400 Market Street
PO Box 8095
Wisconsin Rapids WI 54495

EXAMINER

Kenneth D Duren, Attorney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN [REDACTED]; CARES # [REDACTED]) is an institutionalized resident of Wood County; he applied for MA on July 10, 1998.
2. On July 15, 1998, the county agency issued a Negative Notice to the petitioner informing him that his application for MA was denied, effective July 1, 1998, due to a divestment of resources, and that he would remain ineligible for three months in total, and that MA card services would be provided

- 3 On July 16, 1998, the county agency issued a Notice of Decision to the petitioner repeating the divestment demal information contained in Finding #2, above, and adding information telling ██████ that the divestment consisted of the monthly cash given away and the sale of his home at a rate determined to be less than fair market value ██████ was informed that he may re-apply in October, 1998
- 4 The petitioner filed an appeal with the Division of Hearings & Appeals on July 28, 1998
5. The petitioner's spouse, ██████, had been an institutionalized MA recipient in the months prior to January, 1997; part of her income was being allocated to ██████ as a community spouse. ██████ died on a date unknown subsequent.
6. ██████ was hospitalized on January 6, 1997; and subsequently institutionalized in a skilled nursing facility on January 13, 1997 His institutionalization was not reported to the county agency within 10 days of the facility entry, and Mr. ██████ continued to receive his income allocation from his wife's income stream.
- 7 The county agency first became aware that ██████ was institutionalized in May, 1997 ██████ at all times prior to application paid for his cost of care
8. The county agency determined that ██████ had divested assets, in sequential months and to various relatives, between September, 1996, and July, 1998, the following cash sums

September, 1996 - April, 1997	\$2,900 @ month = \$23,300
May, 1997 - August, 1997	\$3,100 @ month = \$12,400
September, 1997 - July, 1998	\$3,100 @ month = \$34,100
9. The petitioner also sold his residence on or about August 29, 1997 to an unrelated party for a gross sales price of \$62,000, and a net sales price after costs and commissions, of \$55,959 08
10. The county agency determined that the tax assessed fair market value of \$72,100 was the actual fair market value for ██████ house, and subtracted the reported sale figure of \$52,859, to arrive at a determination that \$19,241 of the home's value had been divested as the house was sold for less than fair market value.
11. The county agency determined that the petitioner had divested a total amount of \$88,941, and that when this sum was divided by the average monthly cost of care for a nursing home, i e , \$3,513, then the petitioner was ineligible for 25 months, beginning in the first month of divestment, i.e , September, 1996, and that he would not again be eligible for MA before October, 1998.

DISCUSSION

The asset limit for MA is \$2,000 §49 47(4)(b)3g, Wis Stats If a MA applicant, or person acting on the applicant's behalf, transfers assets for less than fair market value, the applicant is ineligible for MA for the number of months obtained by dividing the disposed amount by the statewide average monthly cost (currently \$3,513) to a private pay patient in a nursing home §HFS 103.065(5)(b), Wis. Adm. Code; §49.453(3), Wis Stats ; see also, MA Handbook, App 14 5 2.

Such transfers are known as "divestments" A divestment is the transfer of income, non-exempt assets, and homestead property belonging to an institutionalized person or his/her spouse, by the institutionalized person, his or her spouse, or a legal representative, for less than the fair market value of the asset. See, MA Handbook, App. § 14 2 1

The petitioner's representative appeared and conceded that the cash funds determined to have been divested, as described in Finding #8, above, were divested to relatives as determined by the agency She

argued, however, that the agency had improperly determined the fair market value of the homestead property, and that part of the divestment arising therein, by using the tax assessment fair market value estimate, and not the actual sales price in the transaction of August 29, 1997

The MA Handbook provides the following guidance, in the parts relevant here

“Fair market value” is an estimate of the prevailing price an asset would have had if it had been sold on the open market at the time it was transferred.

“Divested amount” is the net market value minus the value received

“Net market value” is the fair market value at the time of the transfer minus any outstanding loans, mortgages, or other encumbrances on the property.

“Value received” is the amount of money or value of any services received in return for the person’s property ...

See, MA Handbook, App §§ 14 2 6 – 14 2 9

Here, the agency concluded that the petitioner sold the property for less than its fair market value because his property tax assessor estimated his fair market value to be higher than the actual sale price obtained. The agency did not produce any evidence that it had considered any other factors in concluding that the sale was not conducted on the open market and that less than fair market value was received.

The petitioner’s two nieces appeared and testified that the homestead was sold on the open market for fair market value to an unrelated third party, in an arm’s length transaction. Ms. [REDACTED] testified that the home was built in the 1960s; that the kitchen and bathroom were in disrepair and had never been remodeled, that the porch roof was collapsing, that all carpeting was soiled by pets, that the kitchen cabinets had no finish left on the wood; the home had no basement; and it is in generally poor condition. She testified, and produced documentary evidence from the realtor selling the home, that the home was listed on May 29, 1997, had been shown at least 13 recorded times, had 3 open houses advertised in the local newspaper, was listed in the local newspaper as a new listing on 2 or 3 other occasions; and it was advertised on the Internet. The realtor also opined that, “The home had a lot of deferred maintenance along with no basement, no central air or dishwasher.” See, Exhibit #14.

In effect, the agency estimated the net fair market value, and deducted an amount approximating the net sales proceeds to arrive at the amount divested. See, Finding # 10, above.

I conclude that no divestment occurred at all in the transfer of the homestead. The homestead was sold for fair market value, and the petitioner and his representatives took all reasonable steps to sell the home on the open market. No evidence presented establishes that the sale was anything other than a sale for fair market value at the time of the transfer.

Accordingly, the divested amount is directed to be reduced from \$88,941 to \$69,700. When divided by the average monthly cost of care, the period of ineligibility is 19 months. ($\$69,700 \div \$3,513 = 19.84$ months). The multiple divestments occurred sequentially in every month since September, 1996, meaning that they are correctly added together and the penalty begins in the month of the first such transfer, i.e., September, 1996. See, MA Handbook, App § 14 6 2. Accordingly, the applicable penalty period expired as of March 31, 1998.

The matter is remanded to the county agency with instructions to rescind the denial of MA action for July, August, and September, 1998; and to review and re-determine the petitioner's eligibility for all MA requested in his application, including back-dating if requested at that time, and to issue a written notice of the re-determination.

CONCLUSIONS OF LAW

- 1) The county agency correctly determined that a divestment had occurred during the 36 month lookback period, but the agency incorrectly determined the amount divested
- 2) The county agency incorrectly determined that the petitioner's divestment penalty period was 25 months; the correct penalty period was 19 months
- 3) The county agency incorrectly denied the petitioner's July, 1998, application for MA coverage of his institutional costs because of the 25 month penalty period, the penalty period expired on March 31, 1998.

NOW, THEREFORE, it is

ORDERED

That the matter is remanded to the county agency with instructions to rescind the MA denial actions of July 15-16, 1998, and to review and re-determine the petitioner's eligibility for MA based upon the request for assistance contained in the application of July 10, 1998, and to certify him as eligible for MA for all periods of time for which he is otherwise eligible under his application. These actions are to be completed 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 that 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 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 thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals concerning Medical Assistance (MA) must be served on the Wisconsin Department of Health and Family 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 28th day
of August, 1998.

Kenneth D Duren
Kenneth D Duren, Attorney
Division of Hearings and Appeals
827/kdd

cc. Wood Co.
Susan Wood, DHFS