



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

In the Matter of

(petitioner)

DECISION

MDV-45/81748

PRELIMINARY RECITALS

Pursuant to a petition filed December 30, 2006, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Ozaukee County Dept. of Social Services in regard to valuation of property divested, a hearing was held on February 13, 2007, at Port Washington, Wisconsin.

The issues for determination are (1) whether a certified appraisal on a piece of real property is appropriate for valuing that property for potential divestment purposes and (2) whether petitioner divested real estate by selling it to her son for less than fair market value.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Respondent:

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, P.O. Box 309
Madison, WI 53707-0309

By: Susan Walker, ESS
Ozaukee County Dept Of Social Services
121 W. Main Street, P.O. Box 994
Port Washington, WI 53074-0994

ADMINISTRATIVE LAW JUDGE:

Kenneth P. Adler
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #xxxxxxxxxx) is a resident of Ozaukee County. Petitioner entered a skilled nursing facility in October 2006
2. On 11/16/06 petitioner's son submitted an MA application for petitioner.

3. During January 2004 petitioner's home was appraised at \$149,000. Petitioner's home is a 1950's vintage ranch requiring a significant amount of work to make necessary repairs. The appraisal noted it was completed due to a refinance of the property. Exhibit 1
4. During April 2005 petitioner's son purchased his parent's home for the cost of \$80,000. Just prior to that transaction petitioner gave her son \$80,000.
5. During November 2006 petitioner's home was assessed by the local municipality at \$204,700. The record does not contain any confirmation that assessment was contested by petitioner's son as not reflecting the true value of the property.
6. December 2006 photographs from the home show the deteriorated condition of the interior and exterior. The majority of these conditions were noted in the January 2004 appraisal. Exhibit 2
7. Petitioner's son's estimate of the cost of necessary repairs to the home is approximately \$93,000. Exhibit 5
8. There is a potential structural foundation issue noted in the documentation submitted at hearing regarding the current condition of the home – however that issue was not noted in the January 2004 appraisal. Whether that condition existed at the time of the appraisal, or even at the time petitioner's son purchased the home, is not known. One estimate for the cost of repair of this alleged problem is \$20,000.
9. During December 2006 the county agency concluded petitioner had divested \$149,000 to her son when she gave him \$80,000 and he then purchased her home for \$80,000 at the time it had a fair market value of \$149,000. Essentially, petitioner divested \$80,000 to her son in cash. He then bought her house for \$69,000 below it's fair market value. $\$69,000 + \$80,000 = \$149,000$ divested.
10. Based upon the divestment determination noted in Finding of Fact 9, the county agency calculated a 27 month divestment penalty period beginning with the date of divestment in April 2004. That penalty period would therefore expire in June 2007.

DISCUSSION

In a Fair Hearing such as this, petitioner has the burden of proof to establish his or her eligibility for Medical Assistance and that the divestment determination and denial actions taken by the county agency were improper given the facts of the case. The burden of going forward then shifts to the county to rebut the petitioner's case and establish facts sufficient to overcome his or her evidence of an incorrect action.

A divestment occurs when an institutionalized individual, his spouse, or another person acting on his behalf, transfers assets for less than fair market value, on or after the individual's "look-back date." Wis. Stat. § 49.453(2)(a). The "look-back date" is defined as 36 months before, or with respect to trusts, 60 months before, the first date the individual is both institutionalized and an MA applicant. *Ibid.*, (1)(f).

If such a transfer occurs, the individual is ineligible for MA for nursing home services for a number of months determined by totaling the value of all assets transferred during the look-back period and dividing that amount by the average monthly cost to a private patient of nursing facility services at the time of the MA application. *Ibid.*, (3)(b). The ineligibility period begins with the month of the first divesting transfer of assets. *Ibid.*, (3)(a).

A parallel divestment definition is found at Wis. Admin. Code § HFS 103.065(4), and states in the parts relevant here, as follows:

(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 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. . .

(Emphasis added).

A divestment is not a bar to MA eligibility where:

(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 as defined under s. HFS 101.03 (95) 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 payments; 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 subparagraph, “undue hardship” means that a serious impairment to the institutionalized individual’s immediate health status exists.

§ HFS 103.065(4)(d), Wis. Adm. Code.

Petitioner asserts she sold her home to her son for fair market value at \$80,000. However, petitioner had a certified appraisal of the property for refinancing purposes completed in January 2004 just prior to the purchase by her son. That certified appraisal came back with an estimated fair market value of \$149,000 based upon an inspection of the property and a comparative analysis of three other properties in the near vicinity. See Exhibit 1

Petitioner’s son asserts this appraisal was not accurate as there were many repairs which needed to be completed on the home. At hearing he submitted a comprehensive listing of the estimated cost of those repairs, as well as current photographs of the property. According to petitioner’s son, if one takes the appraised value of the home of \$149,000 and subtracts the \$93,000 in repairs needed to update the home, one arrives at a price lower than the \$80,000 paid for the home. Therefore, petitioner’s son asserts no divestment has occurred as he actually more for the home than it was worth at the time of purchase.

However, according to this administrative law judge’s understanding of the process of a certified appraisal, and the information reviewed and established through such an appraisal, the value reached is the fair market value of the property *in the condition at the time of the appraisal*. That is the reason other properties of comparable size, age and condition are reviewed for that comparison.

I note the certified appraiser did appear at hearing. When questioned regarding this appraisal, he testified his valuations may be different based upon the client – if a person is seeking to have a parent’s vintage home appraised for purchase purposes, the valuation may be different than if a lending institution is seeking to have the property appraised for mortgage purposes. Whether or not that explanation is valid, or even appropriate, is not relevant to my decision. Especially since the appraisal indicates the valuation was completed for a refinance, as opposed to purchase. I will accept the appraised value of the property as established by the certified appraiser after an inspection of the property and a comparison with three other similar properties in the area.

Accordingly, petitioner's son is actually viewing the appraisal and cost of repairs affect on valuation incorrectly. In reality, if he makes the repairs noted in the documentation he had supplied, he will *raise* the value of the home *from its appraised value* of \$149,000 to approximately \$240,000. I would assume that would be the sale price to a third party buyer, based upon the appraised value and the assessed value for the home *in its current condition*.

In addition, I find it instructive there has been no contest to the assessed value placed upon the property by the local municipality. If petitioner's son believes the home he purchased is not worth the price the municipality has it valued for – and for which he is paying taxes based upon – then he should contest that valuation or have contested it in the past. There is, however, no information in the record to confirm any objection has been filed with the local municipality regarding assessed value.

Finally, I note that the December 2006 photographs submitted at the hearing were not relevant as the appraisal was completed on the property in January 2004 and petitioner's son purchased the property in April 2005. Therefore, the appraisal was completed almost three full years before the photographs were taken and the deterioration shown currently would not have been as bad three years ago. In addition, the condition of the property in April 2005 is the focus – not the current condition of the property.

I do note that the county agency made an error in notification of the denial of this MA application. While I find the agency's reason to be appropriate, the agency did not appropriately notify petitioner of its eligibility determination nor explain the basis for that determination. In addition, the agency did not submit a summary prior the fair hearing explaining its actions or the reasons for its actions. However, petitioner's son was prepared for the hearing and presented his evidence and testimony regarding the valuation of the home fully. Therefore, I do not find the county error changes the conclusion that the MA application was correctly denied for the reasons explained in this decision.

CONCLUSIONS OF LAW

1. That the appraised value of the real property at issue in this particular case is the fair market value for divestment purposes.
2. That petitioner divested \$149,000 to her son in April 2004 when he purchased her home for less than its fair market value.
3. That the county agency did not provide proper notification of the denial of this MA application based upon its failure to issue an adequate notice detailing the reason for the denial.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 Wisconsin Statutes § 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 Wisconsin Department of Health and Family 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 650, 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 appeals to the Circuit Court is in Wisconsin Statutes §§ 227.52 and 227.53.

Given under my hand at the City of
Milwaukee, Wisconsin, this 26th day of
February, 2007

/sKenneth P. Adler
Administrative Law Judge
Division of Hearings and Appeals
39/KPA