



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

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In the Matter of

(petitioner)

DECISION

MDV-23/81821

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 5, 2007, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Green County Dept. of Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on February 22, 2007, at Monroe, Wisconsin. At the request of both parties, the record was held open for two weeks for the submission of written closing arguments to the Division of Hearings and Appeals (DHA). Both parties timely submitted their arguments to DHA. The county agency's written argument shall be marked as Exhibit 15 and received into the record. The petitioner's written argument shall be marked as Exhibit 16 and received into the record.

The issues for determination are: a) whether the county agency correctly denied the petitioner's November, 2006 application for Institutional Medical Assistance due to divestment; and b) whether the county agency correctly calculated the petitioner's divestment penalty period.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Representative:

(petitioner's spouse)

**Respondent:**

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: Tammy Haring, ESS  
Green County Dept of Human Services  
N3152 State Road 81  
Monroe, WI 53566

ADMINISTRATIVE LAW JUDGE:  
Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES #xxxxxxxxxx) became a resident of the Pleasant View Nursing Home as of November 8, 2006 in Green County. See Exhibit 10. The petitioner's husband, (petitioner's spouse), resides in their home. See Exhibit 11.
2. On October 30, 1997, the (redacted) Family Trust was created as a revocable living trust. See Exhibit 1.
3. On November 7, 2005, the (redacted) transferred the following assets from the (redacted) Revocable Trust into the (redacted) Irrevocable Income Only trust (Exhibit 2): a) petitioner's family farm that was sold on land contract in September, 1992; b) 200 shares of Woodford Bancshares (Exhibit 4); c) two National Life Company universal life insurance policies (Exhibit 5); and d) the November 7, 2005 warranty deed transferring the (redacted) home into the irrevocable trust (Exhibit 6). See Exhibit 10.
4. During about November, 2005, the value of (redacted) 200 shares of Woodford was \$40,000 and that the values of the National Life Company universal life insurance policies was \$1,784.07 and \$2,281.34. See Exhibit 5 and 16.
5. The petitioner's home was assessed at a fair market value (FMV) of \$106,200 based upon petitioner's 2006 Real Estate Property Tax Bill. See Exhibit 14.
6. The petitioner's husband, (petitioner's spouse), filed an application on behalf of his wife for Institutional Medical Assistance (MA) at the county agency on November 2, 2006. See Exhibit 12.
7. The county agency sent a December 4, 2006 Notice of Decision to the petitioner stating that her application for Institutional MA was denied due to divestment as of November 7, 2005. See Exhibits 8 and 9. The county agency at that time determined the total combined countable assets of petitioner's household to be \$269,692.02 as of December 1, 2006. See Exhibits 8, 9, and 15.
8. The county initially determined the fair market value of petitioner's farm was \$118,800. See Exhibit 15. During the February 22, 2007 hearing, the county agency stipulated to reduce the fair market value of the farm from \$118,800 to \$77,700 based upon a new tax bill recently provided to the county agency. See Exhibit 15.
9. The petitioner stipulated to the county agency's asset value of the 200 shares of stock to be \$40,000; and life insurance policies' value to be \$1,784.07 and \$2,281.34. See Exhibit 16.
10. The petitioner left the nursing home and returned to her home as of January 5, 2007.
11. The county agency sent a February 22, 2007 manual negative notice to the petitioner stating that her application for Medical Assistance was denied due to divestment with a divestment penalty period until December 31, 2009. See Exhibit 10.
12. In its February 27, 2007 written closing argument, the county agency revised and redetermined the following assets to have been divested by petitioner as transferred into the November 7, 2005 Irrevocable Trust: a) the farm - \$77,700; b) \$40,000 for shares of Woodford Bancshares; c) cash values of life insurance policies - \$10,892.02; and d) home - \$100,000.

## DISCUSSION

“Medical assistance is a joint federal and state program aimed at ensuring medical care for those who cannot pay for their own care,” *Buettner v. Department of Health and Family Services*, 2003 WI App. 90, 663 N.W.2d 282 (2003); *Tannler v. DHSS*, 211 Wis.2d 179, 564 N.W.2d 735 (1997). In order to prevent those who have the means to pay for medical care from distributing their assets among family members as a way of meeting the financial eligibility requirements for MA, state and federal law impose a period of MA ineligibility where an applicant has transferred or otherwise disposed of assets on or after a “look-back” date, for less than fair market value, *Wis. Stats.* §49.453(2), *Medicaid Eligibility Handbook* ¶4.7. For situations which do not involve trusts, the look-back date for an institutionalized individual is thirty-six months *before* the first date on which the individual had applied for MA and was institutionalized, *Wis. Stats.* §49.453(1) (f), *Medicaid Eligibility Handbook* ¶4.7.3.

A person seeking medical assistance is ineligible if his assets exceed the MA program’s limit. To prevent those with enough funds to pay for their own medical care from becoming a burden to the general public by passing their assets to potential heirs, MA law prevents a recipient from reaching this limit by divesting assets. A divestment is a transfer of assets for less than fair market value. *Wis. Stat. Sec.* 49.453(2)(a); *Medicaid Eligibility Handbook*, § 4.7.2. A divestment occurs when an applicant, or a person acting on the applicant's behalf, transfers assets for less than their fair market value on or after the lookback date. §49.453(2)(a), *Stats.*; *Medicaid Eligibility Handbook*, § 4.7.2. The lookback date is generally 36 months, but is **60 months if an irrevocable trust is involved**. §49.453(1)(f), *Stats.*; see also *Medicaid Eligibility Handbook*, § 4.7.3. The lookback date for an institutionalized person begins on the first day that the person is both institutionalized and applies for medical assistance. §49.453(1)(f)1., *Wis. Adm. Code*. 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 period of ineligibility 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. See the *Medicaid Eligibility Handbook*, 4.7.5. **The period of ineligibility begins on the date of the divestment.**

At the time petitioner applied for MA on November 2, 2006, the statewide average monthly cost to a private pay patient in a nursing home is \$5,339 per month. *Medicaid Eligibility Handbook*, § 4.7.5. The penalty period is specified in *WI Stat* § 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 applicable during the divestment month. *Medicaid Eligibility Handbook*, § 4.7.5.

The *Medicaid Eligibility Handbook*, sec. 4.7.13.2 provides the following regarding Irrevocable Trusts:

### 4.7.13.2 IRREVOCABLE TRUSTS.

The following actions are divestment if they took place during the lookback period or any time after:

**1. An irrevocable trust was created. The divested amount is the total amount of the created trust.**

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Emphasis added.

Based upon the facts of this case, it is clear that a divestment occurred when on November 7, 2005, the (redacted) transferred assets from the (redacted) Revocable Trust into the (redacted) Irrevocable Income Only Trust as explained in Finding of Fact #3 above.

In the petitioner's written argument, the petitioner stipulated to the county agency's asset value of the 200 shares of stock to be \$40,000; and life insurance policies' value to be \$1,784.07 and \$2,281.34. See Exhibit 16. The petitioner was only contesting the county's valuation of the petitioner's farm and house in regard to the divestment penalty period.

In regard to the farm's value, petitioner argued that the county should only value the farm in the amount of \$25,320 because that was the remaining amount to be paid on the land contract for the farm. See Exhibit 16. That argument must fail. The question is not what remains to be paid on the land contract but the value of the farm transferred into the (redacted) Revocable trust as of November 7, 2005 date of divestment. As explained in Finding of Fact #8, the county agency reduced its valuation of the farm to \$77,7000 based upon new evidence submitted to the county. The petitioner was unable to provide any evidence to refute that as of the November 7, 2005 divestment date, the fair market value of the farm was \$77,700.

In petitioner's written argument, petitioner concurred that the 2006 market value of the home was \$106,200. See Exhibits 14 and 16. However, in Exhibit 16, petitioner attempted to argue that the home's value should be \$63,316 because that amount is the balance from the sale of the property at the reduced price of \$70,900. However, in Exhibit 6 (attached to the home's warranty deed) is a statement of "Memorandum of Gift." See Exhibit 6, page 2. That "Memorandum of Gift" is the proper name and title for the \$70,900 price; a reduced price as a gift to petitioner's family members. As explained above, a divestment occurs when an applicant, or a person acting on the applicant's behalf, transfers assets for less than their fair market value on or after the lookback date. §49.453(2)(a), Stats.; *Medicaid Eligibility Handbook*, § 4.7.2. The fair market value of the property was \$106,200, not \$63,316.

In the county's February 27, 2007 written closing argument, the county appeared to indicate that the cash value of petitioner's life insurance policies was \$10,892. See Exhibit 15, page 2. The county never established with any evidence such value. Instead, the established value of those two life insurance National Life Company universal life insurance policies (Exhibit 5) was \$1,784.07 and \$2,281.34.

In this case, the county agency initially based the divestment amount of \$269,692.02 upon the total assets placed into the (redacted) Irrevocable Trust on November 7, 2005. The county agency calculated the divestment penalty period as follows: \$269,692.02 divided by \$5,339 equals 50 months of penalty period continuing through December, 2009. The county agency clearly established its prima facie case that it correctly denied the petitioner's November, 2006 Institutional MA application due to some level of divestment.

However, the remaining issue is the calculation of that divestment and the penalty period. Based upon the above discussion, the county agency needs to recalculate the petitioner's divestment amount and penalty period based upon the following:

1. fair market value of the farm at \$77,700.
2. fair market value of the home at \$106,200
3. life insurance policies valued at \$1,784.07 and \$2,281.34
4. stocks - \$40,000.

### CONCLUSIONS OF LAW

1. The county agency correctly issued a December 4, 2006 Notice of Decision to the petitioner stating that her application for Institutional MA was denied due to divestment.
2. The petitioner's total divestment amount and penalty needs to be recalculated by the county agency in accordance with the above Discussion Section.

**NOW, THEREFORE, it is**

**ORDERED**

The matter is remanded to the county agency with instructions to: a) recalculate the petitioner's divestment amount and penalty period in accordance with the above Discussion Section; and b) issue to the petitioner a new notice explaining in detail how the revised divestment amount and penalty period have been calculated, within 10 days of the date of this Decision. In all other respects, 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  
Madison, Wisconsin, this 19th day of  
April, 2007

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/sGary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals  
725/GMW