



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MDV-13/84361

PRELIMINARY RECITALS

Pursuant to a petition filed April 23, 2007, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Dane County Dept. of Human Services in regards to the discontinuance of Long Term Care Medical Assistance – Community Waivers eligibility, the hearing was held on May 16, 2007, at Madison, Wisconsin.

The issue for determination is whether the county agency correctly discontinued the petitioner's MA – Community Waivers eligibility because she had divested \$90,000 to her daughter and son-in-law.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Represented By:

Attorney Brenda R. Haskins
Hill, Glowacki, Jaeger & Hughes, LLP
2010 Eastwood Drive, Ste. 301
Madison, WI 53704

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: Kara Ponti, ESS
Dane County Dept Of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #xxxxxxxxxx) is a 79 year-old single resident of Dane County. She lives in the community and was receiving Community Waivers – MA in April, 2007, in order to continue to do so. (redacted) is her daughter and durable power-of-attorney.

2. On March 16, 2007, the petitioner sold her homestead realty for gross receipts of \$104,330.23. After distributions for closing costs, attorney's fees, an outstanding promissory note balance and a burial fund set-aside, the petitioner retained net sale proceeds of \$90,000.
3. On March 29, 2007, the petitioner's daughter, (redacted), and son-in-law (redacted), executed a Quit Claim Deed conveying to the petitioner a life estate interest in the (redacted) residence for the purpose of confirming that the petitioner would reside in their tri-level home on the lower level.
4. On March 30, 2007, the petitioner and her power of attorney took the Quit Claim Deed to the Dane County Register of Deeds and filed the document for recording. They then went to the petitioner's bank where the petitioner had a bank draft prepared for \$90,000 taken from her account, and payable to (redacted). See, Exhibit #9.
5. The intent of the \$90,000 payment from the petitioner to the couple was to compensate the couple for the value of the life estate conveyed by the couple to the petitioner one day before by Quit Claim Deed.
6. The petitioner calculates that at age 79, using the MA actuarial table for life estates and the fair market value of the (redacted) residence as stated in the 2006 Real Estate Property Statement of \$290,300, that the value of the Life Estate conveyed by the (redacted) to the petitioner would be \$131,671.37. See, Exhibits #8, #13 & #15.
6. On or about April 23, 2007, the county agency received information that the petitioner had sold her residence on March 16, 2007, that the petitioner's daughter and son-in-law had quit claimed their entire residence realty to the petitioner on March 29, 2007, and that the petitioner had then paid the couple \$90,000 on March 30, 2007.
7. The county agency determined that the petitioner had divested \$90,000 to her daughter and son-in-law, on March 30, 2007, and that she would be ineligible for a penalty period of 16 months thereafter.
8. On April 20, 2007, the county agency issued a Notice to the petitioner informing her that her LTC-MA Community Waivers eligibility would be discontinued, effective June 1, 2007, because she had improperly transferred assets; the Notice did not state the divested amount found or the expected penalty period.
9. No other subsequent notice or letter was issued that stated the divested amount or penalty period.
10. The petitioner filed an appeal with the Division of Hearings & Appeals on April 23, 2007, contesting the discontinuance of her LTC-MA Community Waivers eligibility, and requesting continued benefits. Benefits were continued pending the hearing decision.

DISCUSSION

The Medicaid Eligibility Handbook, App. § 4.5.8., provides as follows for the valuation of realty:

To determine the value of a life estate or remainder interest:

1. In the Life Estate and Remainder Interest Table (8.1.2) find the line for the person's age as of the transaction date.
2. Multiply the figure on that line in the Life Estate or Remainder column times the fair market value to determine the value of the life estate or remainder interest.

The MEH further provides:

4.7.2.1 Divestment

"Divestment" is the transfer of *income*, non-exempt assets, and homestead property (4.7.2.3.1), which belong to an institutionalized person or his/her spouse or both:

1. For less than the fair market value of the income or asset by:
 - a. An institutionalized person, or
 - b. His/her spouse, or
 - c. A person, including a court or an administrative body, with legal authority to act in place of or on behalf of the institutionalized person or the person's spouse, or
 - d. A person, including a court or an administrative body, acting at the direction or upon the request of the institutionalized person or the person's spouse. This includes relatives, friends, volunteers, and authorized representatives.

It is also divestment if a person takes an action to avoid receiving income or assets s/he is entitled to. Actions which would cause income or assets not to be received include:

1. Irrevocably waiving pension income.
2. Disclaiming an inheritance.
3. Not accepting or accessing injury settlements.
4. Diverting tort settlements into a trust or similar device.
5. Refusing to take legal action to obtain a court-ordered payment that is not being paid, such as child support or alimony.
6. Refusing to take action to claim the statutorily required portion of a deceased spouse's or parent's estate. Count the action as a divestment only if:
 - a. The value of the abandoned portion is clearly identified, and
 - b. There is certainty that a legal claim action will be successful.

This includes situations in which the will of the institutionalized person's spouse precludes any inheritance for the institutionalized person. Under Wisconsin law, a person is entitled to a portion of his/her spouse's estate. If the institutionalized person does not contest his/her spouse's will in this instance, the inaction may be divestment.

Based upon the evidence presented in this action, I can only conclude that the petitioner has received a life estate interest in her daughter's home with a present value of \$131,000, and that one day later the petitioner paid to the petitioner \$90,000 in cash in return for this life estate interest. As the technical,

legal, and financial value of the life estate received exceeds the liquid cash value of \$90,000, by \$41,000, I can only conclude that the petitioner got fair market value in return for her cash. She received a legally binding interest in the subject realty for the duration of her life.

In addition, the agency has failed to provide adequate notice of the divestment determination, lacking any statement of the divested sum or penalty period.

The matter is remanded to the county agency with instructions to rescind the divestment determination of April 20, 2007, and the discontinuance of the petitioner's LTC-MA Community Waivers coverage that was to take effect on June 1, 2007; and restore her eligibility for this MA Waivers coverage.

CONCLUSIONS OF LAW

That the county agency incorrectly determined that a divestment took place on March 30, 2007; on March 29, 2007, the petitioner received fair market value from her daughter and son-in-law in excess of the \$90,000 she transferred to her daughter and son-in-law on March 30, 2007 in return for the life estate she received.

NOW, THEREFORE, it is ORDERED

That the matter is remanded to the county agency with instructions to: rescind the determination of April 20, 2007, that the petitioner had divested \$90,000 to relatives on March 29-30, 2007; rescind the determination of the same date that the petitioner's LTC-MA Community Waivers eligibility would end on effective June 1, 2007; and restore the petitioner's eligibility for LTC-MA Community Waivers, with notice, and for so long as she remains otherwise eligible. These actions shall be completed within 10 days of the date of this Decision.

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 21st day of
May, 2007

/sKenneth D. Duren
Administrative Law Judge
Division of Hearings and Appeals
725/KDD