



STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS

In the Matter of

[REDACTED]

DECISION
MDV-47/#96412

The proposed decision of the hearing examiner dated August 12, 1996 is hereby adopted as the final order of the Department.

REQUEST FOR A REHEARING

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.

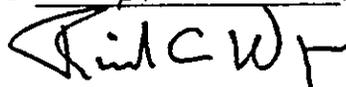
Your request for a new hearing must be received no later than 20 days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in Sec. 227.49 of the state statutes. A copy of the statutes can be found at your local library or courthouse.

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 Workforce Development, P.O. Box 7946, Madison, WI 53707-7946.

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 10th
day of September, 1996.



Richard C. Wegner, Acting Secretary
DEPARTMENT OF WORKFORCE DEVELOPMENT



STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS

In the Matter of

PROPOSED
DECISION

[REDACTED]

MDV-47/#96412

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

Pursuant to a petition filed July 12, 1996, under sec. 49.45(5), Wis. Stats., to review a decision by the Pierce County Dept. of Human Services to deny Medical Assistance (MA), a hearing was held on August 6, 1996, at Ellsworth, Wisconsin.

The issue for determination is the length of MA ineligibility following a transfer into an irrevocable trust.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Wisconsin Department of Workforce Development
Bureau of Welfare Initiatives
1 W. Wilson St., Room 350
P.O. Box 7851
Madison, WI 53707-7851
By: Carol Hilsgen, ESW
Pierce County Dept. of Human Services
388 W. Main St., P.O. Box 670
Ellsworth, WI 54011

EXAMINER:

Brian C. Schneider, Attorney
Department of Health & Social Services

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

1. Petitioner (SSN [REDACTED]; CARES No. [REDACTED]) is a nursing home resident of Pierce County.
2. In 1988, the irrevocable [REDACTED] Family Trust was created. Petitioner is a beneficiary of the trust, and her brother [REDACTED] is trustee. [REDACTED] also is petitioner's attorney-in-fact.

3. On February 2, 1996, petitioner wrote checks totalling \$9,000 to her sister and her son. The checks were intended to be gifts. Rather than accept the the money, the recipients turned the endorsed checks over to [REDACTED] with the intent that he use the money as petitioner's trustee. As of that date, all trust assets were non-monetary, such as real estate and stocks. On February 27, 1996, [REDACTED] opened a trust checking account and deposited the \$9,000 into it.

4. In April, 1996, [REDACTED] liquidated petitioner's personal stock holdings, and on April 26, he deposited the proceeds of \$6,354 into the trust checking account which he had opened in February. As of April 26, the total value of the trust, including the recently opened checking account, was \$309,911.

5. On May 15, 1996, [REDACTED] wrote two checks totalling \$3,118 from the trust checking account to petitioner's son and daughter. The checks were intended to be gifts from petitioner to her children, but [REDACTED] mistakenly issued them from the trust checking account instead of petitioner's personal account.

6. On June 5, 1996, an application for MA was filed on petitioner's behalf. The county denied the application as it concerned nursing home services, alleging a disqualifying divestment which resulted in 99 months of ineligibility. Petitioner was granted MA for medical services.

D I S C U S S I O N

A divestment occurs when an institutionalized individual, her spouse, or another person acting on her behalf, transfers assets for less than fair market value, on or after the individual's "look-back date." Sec. 49.453(2)(a), Wis. Stats. 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. Sec. 49.453(1)(f), Stats. If such a transfer occurs, the individual is ineligible for MA for nursing home services for a number of months determined by totalling 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. Sec. 49.453(3)(b), Stats. The ineligibility period begins with the month of the first divesting transfer of assets. Sec. 49.453(3)(a), Stats.

The first issue in this case is whether the MA Handbook, Appendix 14.12.2, has a legal basis. Under sec. 49.454(3), Stats., any portion of an irrevocable trust which was created by assets of the MA applicant, through which the terms of the trust do not allow payments to the applicant, is a divestment. Therefore, if assets otherwise available to an MA applicant are deposited into a disqualifying trust, the deposit must be considered a divestment of the assets.

The Handbook provision states that if funds are added to an irrevocable trust, the agency must consider the entire body of the trust to have been divested. Based on that, the placement of the stock proceeds into the trust resulted in the county determination that the entire \$309,911 trust value was considered to be divested.

I conclude that there is no basis in the law for the mandate of the MA policy handbook. There is nothing in the statute, the Wisconsin Administrative Code, or federal law which requires the counting of the entire trust upon the mere addition of funds resulting from a divestment. The statute is clear; a

divestment occurs when assets are transferred for less than market value during the look-back period. The divestment disqualification is determined using the value of assets transferred during the look-back period. There is nothing which allows the agency to graft onto the divestment penalty assets which were transferred prior to the look-back period, or trusts which were created from assets which were not owned by the MA applicant when the trust was created.

The disqualifying divestments in this case, therefore, were the \$9,000 gifts in February, and the \$6,354 transfer to the trust in April. The \$3,118 gift from the trust account to petitioner's children was not a divestment, as it was not made from petitioner's personal funds, but was made from the same \$15,354 checking account that already is being counted once as a divestment. If, however, the trust was later reimbursed from petitioner's personal funds, then the reimbursement would be a divestment. Since I do not have such evidence in the record, I will not count the May transfer as a divestment, but the county may revise the ineligibility period if it does have such information.

The total divestment, therefore, was \$15,354, divided by \$3,120, which equals 4.92. Since fractions are rounded down, Handbook, App. 14.5.2, there are four months of ineligibility beginning February, 1996. Petitioner would be eligible for nursing home MA beginning June 1, 1996, subject to a determination of the May, 1996 gifts to petitioner's children.

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

1. The provision in the MA Handbook, Appendix 14.12.2, which makes the entire value of a trust a divestment when funds are added to it, is without basis in law and thus invalid.
2. When an MA applicant/recipient divests assets by transferring them to an irrevocable trust, the divested amount is the value of the transferred assets.

NOW, THEREFORE, it is

O R D E R E D

That the matter be remanded to the county with instructions to redetermine petitioner's MA eligibility based only upon the value of petitioner's personal assets divested during the look-back period. The county shall do so within 10 days of this decision.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P. O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15 day comment period, the entire

hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Workforce Development for final decision-making.

The process relating to Proposed Decisions is described in sec. 227.46(2), Wis. Stats.

Given under my hand at the City of
Madison, Wisconsin, this 12TH
day of AUGUST, 1996.



Brian C. Schneider, Attorney
Division of Hearings and Appeals
0809/bcs