



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

MDV/152759

PRELIMINARY RECITALS

Pursuant to a petition filed October 11, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance/COP Waiver eligibility, a hearing was held on December 3, 2013, at Madison, Wisconsin. With the parties' consent, the hearing record was held open to December 19, 2013.

The issue for determination by the Administrative Law Judge has been resolved.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Petitioner's Representative:

Attorney Brenda R. Haskins
3866 Johns St
Madison, WI 53714

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Heidie Feldmann, ES Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County.

2. In January 2011, the petitioner resided in a paid-for condominium. Her son asked for her assistance in purchasing a FedEx route. The petitioner took out an \$80,000 mortgage on her condominium, and gave the proceeds to her son for the route purchase. The route purchase occurred. The son has subsequently made the mortgage payments.
3. The petitioner entered an assisted living community-based-residential-facility (CBRF) in March 2013, and her condominium was put up for sale. In June 2013, she applied to the county agency for the COP Waiver program.
4. On August 23, 2013, the county agency issued a *Negative Notice* to the petitioner, denying her COP Waiver application. The *Notice* identifies a 45-day deadline for filing an appeal. The basis for denial was that a divestment had occurred. The divestment amount was determined to be \$66,090 (\$80,000 minus payments the son has made against the mortgage). A divestment of this amount created a divestment penalty period from June 1, 2013 to February 26, 2014. *See*, Exhibit 1.
5. On September 10, 2013, the petitioner filed a request for an undue hardship waiver of her divestment penalty period. On September 30, 2013, the county agency issued a *Negative Notice* advising the petitioner that her undue hardship waiver request had been denied. The petitioner filed an appeal with this office on October 11, 2013.
6. The condominium was sold on October 29, 2013.

DISCUSSION

At hearing, the petitioner presented additional evidence in support of her undue hardship waiver request. The agency agreed to review that information in the context of a new undue hardship waiver request. The hearing record was held open for further document review by the county agency.

On December 12, 2013, this Administrative Law Judge received a letter from agency worker Feldmann which stated, in pertinent part:

I wanted to let you know that we have resolved this issue regarding [REDACTED]'s eligibility and she no longer has a divestment penalty. I was able to work with South Madison Coalition for the Elderly and her eligibility will be backdated for the waivers program.

This Administrative Law Judge left a telephonic message with Attorney Haskins office, asking for a prompt contact if there was objection to dismissal of this appeal. No objection was made. Therefore, it is my belief that there is no issue remaining for resolution by this Administrative Law Judge.

CONCLUSIONS OF LAW

1. No issue regarding imposition of a divestment penalty upon the petitioner remains for resolution by this Administrative Law Judge.

THEREFORE, it is

ORDERED

That the petition is 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 Wis. Stat. § 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 served and filed with the appropriate court 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 Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

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 Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 30th day of December, 2013

Nancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 30, 2013.

Dane County Department of Human Services
Division of Health Care Access and Accountability
brenda@haskinslawllc.com