



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MDV - 214370

PRELIMINARY RECITALS

Pursuant to a petition filed on July 29, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services regarding Medical Assistance (MA), a hearing was held on September 4, 2024, by telephone.

The issue for determination is whether the agency correctly imposed a divestment penalty period between August 1, 2024, through May 28, 2025.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Attorney Carol J. Wessels
Wessels & Liebau LLC
11649 N Port Washington Rd # 210
Mequon, WI 53092

Respondent:

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

By: Mary Swab

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County and is enrolled in nursing home long-term care.
2. On April 27, 2022, Petitioner's son purchased a vehicle on Petitioner's behalf. The vehicle was titled in Petitioner's name. Petitioner was not able to drive. However, her son used the vehicle on Petitioner's behalf to transport Petitioner to and from numerous medical appointments.
3. On May 25, 2022, Petitioner transferred \$25,008.67 to her son to reimburse him for expenses he incurred to care for her (gas, hotel stays, travel) as well as assisting Petitioner with moving multiple times. Petitioner's son provided a detailed expense sheet listing each item.
4. On November 21, 2022, Petitioner transferred her vehicle to her son.
5. On July 19, 2024, the agency sent Petitioner a notice informing her that she had a divestment penalty period between August 1, 2024, through May 28, 2025, due to divesting \$95,186.78, which was the cost of the vehicle as well as the May 25, 2022, transfer to her son.

DISCUSSION

Divestment is the act of transferring ownership of assets or income and receiving less than fair market value in return. Applicants or members seeking Medicaid-covered long-term care services are subject to a set of special rules about transferring assets and income. 42 U.S.C. 1396p(c)(1)(A); Wis. Stat., §49.453(2)(a); Wis. Admin. Code, §DHS 103.065(4)(a); Medicaid Eligibility Handbook MEH §§ 17.1 and 17.2. Transfers of an applicant's assets and/or income by someone acting on behalf of the applicant are also subject to divestment rules. Id.

In this case, the agency attributed two divestments to Petitioner. First, the agency believed that the purchase of a vehicle for Petitioner when she could not drive was a divestment. That vehicle was then transferred to Petitioner's son. The agency seemed to imply that Petitioner's son was actually purchasing the vehicle for himself. However, Petitioner submitted credible evidence establishing that the vehicle was purchased to transport Petitioner to her numerous medical appointments. Further, relevant rules allow for the purchase of one vehicle to transport. The Medicaid Eligibility Handbook (MEH) 16.7.9.2 states, in pertinent part, "One vehicle per eligible individual or couple is excluded regardless of the value if it is used for transportation of the eligible individual or couple or a member of the eligible individual's or couple's household. Assume the vehicle is used for transportation, absent evidence to the contrary." Thus, Petitioner's son purchasing a vehicle to transport Petitioner is not a divestment.

Subsequently, in November 2022, Petitioner transferred the vehicle to her son. This too is allowed under the rules and does not constitute a divestment:

MEH 17.2.3.2 Transfers of Exempt Income or Assets

Income or assets determined to be exempt (except homestead property per 17.2.7.1 TRANSFER FOR LESS THAN FAIR MARKET VALUE) are not subject to divestment rules.

Example 7: Hattie is eligible for Medicaid and receiving long-term care services. She owns one car. Hattie transfers ownership of the car to her sister. Hattie buys another car, and now once again owns one car. She gives this car to her father. Because one car is an exempt asset, these transfers are not subject to divestment rules

Therefore, the purchase of the vehicle and the transfer of the vehicle should not have been considered divestments under the rules.

Next, the agency alleged that the transfer of funds to Petitioner's son on May 25, 2022, in the amount of \$25,008.67 is a divestment. However, that amount was issued to Petitioner's son to reimburse him for numerous expenses he incurred caring for Petitioner as well as assisting her with moving. The funds were not for services rendered. Rather, the amount was to reimburse Petitioner's son for his out-of-pocket expenses that he incurred. Petitioner's son submitted a detailed spreadsheet itemizing his expenses. Since the \$25,008.67 is a reimbursement, it cannot be considered a divestment.

Thus, the evidence established that the agency incorrectly issued a divestment period in this case.

CONCLUSIONS OF LAW

The agency incorrectly issued a divestment period to Petitioner for the period between August 1, 2024 through May 28, 2025.

THEREFORE, it is

ORDERED

That within 10 days of the date of this decision, the agency rescind the divestment penalty period.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

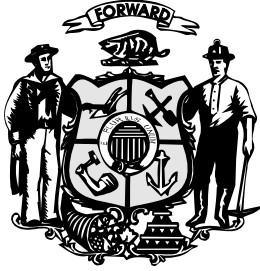
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of October, 2024

\s _____
Nicole Bjork
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 October 22, 2024.

Washington County Department of Social Services
Division of Health Care Access and Accountability
Attorney Carol Wessels