



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MDV - 214870

PRELIMINARY RECITALS

Pursuant to a petition filed on September 3, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services regarding Medical Assistance (MA), a hearing was held on October 10, 2024, by telephone.

The issue for determination is whether the agency correctly determined Petitioner incurred a divestment penalty period between May 15, 2024, through October 2, 2026.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
c/o Attorney John C Schober
2835 S. Moorland Road
New Berlin, WI 53151

Petitioner's Representative:

Attorney John C. Schober
Schober Schober & Mitchell, SC
2835 S. Moorland Rd.
New Berlin, WI 53151-3743

Respondent:

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

By: Kristy Kasper
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. On May 15, 2024, an MA application was submitted on Petitioner's behalf. Petitioner was functionally eligible for enrollment at the time of application.
3. On July 8, 2024, the agency received an affidavit from Petitioner's husband, [REDACTED] reporting that between December 2022 through May 2024, Petitioner had been scammed out of \$275,000 by individuals that he met online. Petitioner had believed that he was investing in legitimate businesses owned by these online friends.
4. On July 19, 2024, the agency sent a notice to Petitioner informing her that her MA application for community waivers had been denied due to a divestment from the \$275,000 that her husband lost to being scammed. The divestment penalty period was calculated to be 871 days, from May 15, 2024, to October 2, 2026.
5. On September 25, 2024, Petitioner submitted an Undue Hardship Waiver request, which was granted. Petitioner was then deemed financially eligible and enrolled effective October 10, 2024.
6. Petitioner filed an appeal of the notice of denial. Petitioner's representative argued at hearing that the agency incorrectly determined that the \$275,000 Petitioner was scammed out of was a divestment. Petitioner's representative argued that eligibility should have been determined by June 15, 2024, with enrollment completed by June 30, 2024, and an enrollment start date of July 1, 2024.

DISCUSSION

When an individual, the individual's spouse, or a person acting on behalf of the individual or his spouse, transfers assets at less than fair market value, the individual is ineligible for MA coverage of nursing facility services. 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 § 17.2.1. The penalty period is the number of days determined by dividing the value of property divested by the average daily nursing home cost to a private pay patient. MEH § 17.5.2.

A divestment that occurred in the look back period or any time after does not affect eligibility if the person who divested can show that the divestment was not made with the intent to qualify for Medicaid. MEH § 17.2.6.1. There must be evidence that shows the specific purpose and reason for making the transfer and establish that the resource was transferred for a purpose other than to qualify for Medicaid. The individual's intent must be evaluated on a case-by-case basis to determine whether a divestment occurred. *Id.*

The agency determined that Petitioner's husband divested \$275,000 when he lost that money in an internet scam. The Wisconsin Administrative Code provides some guidance on divestment:

(d) *Circumstances under which divestment is not a barrier to eligibility.* An institutionalized individual who has been determined to have made a prohibited divestment under this section shall be found ineligible for MA as defined under s. [DHS 101.03 \(95\)](#) unless:

1. The transfer of property occurred as the result of a division of resources as part of a divorce or separation action, the loss of a resource due to foreclosure or the repossession of a resource due to failure to meet payments; or
2. It is shown to the satisfaction of the department that one of the following occurred:
 - a. The individual intended to dispose of the resource either at fair market value or for other valuable consideration;

- b. The resource was transferred exclusively for some purpose other than to become eligible for MA;
- c. The ownership of the divested property was returned to the individual who originally disposed of it; or
- d. The denial or termination of eligibility would work an undue hardship. In this subparagraph, "undue hardship" means that a serious impairment to the institutionalized individual's immediate health status exists.

Wis, Adm. Code § DHS 103.065(4)(d).

In a Fair Hearing such as this, the petitioner has the burden of proof to establish that a denial action taken by the agency, such as the denial of MA due to a divestment of assets was improper given the facts of the case. See 20 C.F.R. §§416.200-416.202; see also, 42 C.F.R. §435.721(d). The burden of proof is on the applicant or recipient to show that one of the above circumstances exists under Wis, Adm. Code §DHS 103.065(4)(d).

In this case, Petitioner's husband believed that he was making a financial investment. He met individuals online and believed them when they asked for investment money. Unfortunately, there were no business and Petitioner's husband was scammed. He was the victim of fraud. No evidence was submitted to establish that Petitioner's husband was attempting to be scammed so that his wife could qualify for Medicaid. Rather, her husband was swindled. This situation meets Wis, Adm. Code § DHS 103.065(4)(d)(2)(a), meaning that Petitioner intended this money to be an investment for valuable consideration. His intention was not to give the money away or lose it altogether.

Because there was no divestment, the agency did not correctly determine the date Petitioner was eligible to enroll in Community Waivers. Petitioner was functionally and financially eligible for MA and Community Waivers effective July 1, 2024. Petitioner's eligibility and enrollment date should be backdated to July 1, 2024.

CONCLUSIONS OF LAW

There was no divestment concerning the \$275,000 that Petitioner's husband lost due to a scam. Petitioner's eligibility and enrollment date for MA and Community Waivers should be backdated to July 1, 2024.

THEREFORE, it is

ORDERED

The agency must, within 10 days of the date of this decision, take all necessary administrative steps to revise the Petitioner's FCP enrollment date to July 1, 2024.

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.

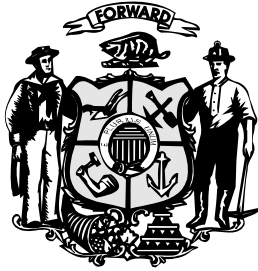
APPEAL TO COURT

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 19th day of November, 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 November 19, 2024.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability
Attorney John Schober
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