



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

Case #: MDV - 214942

PRELIMINARY RECITALS

Pursuant to a petition filed on September 6, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services regarding Medical Assistance (MA), a hearing was held on October 24, 2024, by telephone.

The issue for determination is whether the agency correctly denied Petitioner's request for an undue hardship waiver and whether an appeal of a notice of divestment is untimely.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Petitioner's Representative:



Respondent:

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

By: Evan Gilbert
Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Sheboygan County.
2. On May 16, 2024, an MA application was submitted on Petitioner's behalf.

3. On May 30, 2024, the agency sent Petitioner a notice informing him that he had incurred a divestment penalty period of 1023 days due to the transfer of property in Nevada without receiving fair market value. This notice informed Petitioner that if he disagreed with that determination, he could file an appeal with the Division of Hearings and Appeals but that any such appeal must be filed by July 15, 2024.
4. On June 7, 2024, an incomplete undue hardship waiver request was submitted to the agency on Petitioner's behalf.
5. On June 12, 2024, an agency representative spoke with Petitioner's authorized representative, ■■■, and informed him what required documentation was missing from the undue hardship waiver request. Specifically, Petitioner was required to submit within 20 days proof that an undue hardship would exist if the divestment period was applied. Further, Petitioner was required to submit proof that attempts were made to recover the divested assets.
6. On August 9, 2024, the agency sent Petitioner a notice informing him that his undue hardship waiver request was denied because he failed to provide the requested documentation within 20 days.
7. Petitioner filed an appeal. During the appeal, Petitioner's representative disputed the divestment but was notified that the appeal deadline had passed to dispute the divestment. ■■■, a representative from ■■■■■■■■■■ where Petitioner is a resident, also testified and stated that they chose the undue hardship wavier "route" rather than appealing the notice of divestment because Petitioner has no funds and "would be out on the street" if the undue hardship waiver wasn't granted. ■■■ then testified that he was sorry for missing the verification deadlines.

DISCUSSION

Divestment and Divestment Penalty

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. An applicant for MA programs that has transferred assets and/or income during a five year "lookback" period is subject to having those transfers evaluated for compliance with the divestment rules. Id. 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 determined that Petitioner divested property and issued a notice to Petitioner informing him of that determination. This notice further informed Petitioner that if he disputed that determination, he could file an appeal with the Division of Hearings and Appeals but that any such appeal must be filed by July 15, 2024. Petitioner filed his appeal on September 9, 2024, almost two months after the deadline to file the appeal.

An administrative law judge (ALJ) or hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning Medical Assistance (MA) must be filed within 45 days of the date of the action. Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0. In this

case, since Petitioner appealed the notice of divestment beyond the appeal deadline, I have no jurisdiction to determine the underlying merits of that divestment. The appeal is untimely.

Undue Hardship Waiver Requests

An undue hardship waiver may be requested when eligibility is denied because a divestment penalty period has been imposed. MEH § 22.4.1. Undue hardship occurs if denial or termination of an applicant's or member's eligibility for coverage of long-term care services would deprive the person of any of the following:

- Medical care, which then endangers the person's health or life
- Food
- Clothing
- Shelter
- Other necessities of life

Id.

An applicant or member (or his or her authorized representative, power of attorney, or legal guardian) must submit both of the following verifications of undue hardship (unless otherwise noted):

- A statement signed by the applicant or member (or his or her authorized representative) which describes the following:
 - ...
 - In cases of divestment, whether the assets are recoverable, and if so, the attempts that were made to recover the divested assets
 - ...
- Proof that an undue hardship would exist if eligibility is terminated or denied or the divestment penalty period is applied (required for all four situations to which Undue Hardship policy may apply) as follows:
 - If the applicant or member is currently institutionalized, he or she must submit a copy of the notification from the long term care facility which states both of the following:
 - The date of involuntary discharge
 - An alternative placement location
 - Or other proof that if the undue hardship waiver is not approved, the applicant or member will:
 - Not receive medical care resulting in his or her health or life to be endangered
 - He or she will not have food, clothing, shelter, or other necessities of life.

MEH § 22.4.5.

I conclude the agency has correctly denied the undue hardship waiver request. Petitioner's representative, ■■■, was notified that he was required to verify that the divested property was not recoverable. ■■■ failed to

provide sufficient evidence to demonstrate what attempts have been made to recover the assets. Further, ■, on behalf of the Petitioner, failed to submit verification that Petitioner would suffer an undue hardship due to the divestment penalty period. ■ apologized during the hearing for not timely submitting the requested verification. Further, ■ from ■ stated that Petitioner has no funds and that a divestment penalty period would put Petitioner “out on the street.” I sympathize with Petitioner and understand the consequences. However, I have no power to create an exception to the rules because of very sympathetic circumstances. I have no such authority to disregard the rules.

Administrative law judges do equitable powers and cannot create exceptions to the established regulations, even in the interests of fairness. It is the longstanding policy of the Division that the Department's assigned administrative law judges do not possess equitable powers. *See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. The rules are clear that Petitioner was required to submit verification within 20 days in order for the undue hardship waiver to be granted. There is no dispute that the agency failed to receive that verification.

CONCLUSIONS OF LAW

1. There is no jurisdiction to review the underlying merits of the notice of divestment because that appeal was untimely filed.
2. The agency correctly denied the undue hardship waiver requests because Petitioner failed to submit the requested verification within 20 days.

THEREFORE, it is

ORDERED

That the Petitioner’s appeal is dismissed.

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.

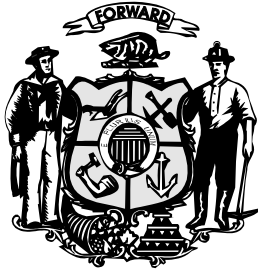
APPEAL TO COURT

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 20th 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 20, 2024.

Sheboygan County Department of Human Services
Division of Health Care Access and Accountability