



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

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

**DECISION**  
Case #: MDV - 201093

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on December 23, 2020, 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 February 18, 2021, by telephone.

The issue for determination is whether the agency correctly determined the Petitioner divested funds to become eligible for MA and correctly determined the divestment penalty and penalty period.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

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

By: [REDACTED]  
Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On February 12, 2020, the Petitioner submitted an EBD MA application. For assets, she reported a [REDACTED] checking account with a balance of \$10. She reported Social Security income of \$1555/month. No other assets or income was reported. A bank statement from [REDACTED] for March – April 2019 was submitted showing a deposit on April 2, 2019 of \$19,266. The statement also showed 3 checks written on the account in the amount of \$3211/each on April 16 and 17, 2019.
3. On February 12, 2020, the agency received a referral from the ADRC for the Petitioner to enroll in Long-Term Care waiver program. A Long-Term Care Functional Screen was submitted which indicates the Petitioner was functionally eligible as of February 10, 2020 for Family Care and IRIS.
4. On February 14 and 26, 2020, the agency issued Notices of Proof Needed to the Petitioner requesting verification of her liquid assets. The due date for the information was March 11, 2020. No verification was submitted.
5. On March 12, 2020, the agency issued a notice of decision to the Petitioner informing her that her application for community waivers was denied due to failure to provide requested verification.
6. In April 2020, a new signature page was submitted for the Petitioner's application. On April 14, 2020, a second request for verification was issued by the agency to provide information regarding all assets related to the Petitioner's checking account and other liquid assets. The due date for the verification was May 11, 2020. No verification was submitted.
7. On April 27, 2020, the agency issued a notice of decision to the Petitioner informing her that her application for community waivers was denied due to failure to provide requested verification.
8. On July 1, 2020, the Petitioner submitted a new application for community waivers with a three month backdate request.
9. On July 3, 2020, the agency issued a Notice of Proof Needed requesting verification of a burial trust, [REDACTED] checking account, [REDACTED] savings account and any other liquid assets. The due date for the verification was August 3, 2020. No verification was submitted by the due date.
10. On August 10, 2020, the agency issued a notice of decision to the Petitioner informing her that her application was denied due to failure to provide requested verification.
11. On September 11, 2020, the Petitioner submitted a new signature page and verification of an inheritance that she received from an aunt on April 2, 2019 in the amount of \$19,266. The Petitioner retained \$9,633. She wrote checks to her sister and her brother for their share of the inheritance. She indicated that she used her share of the inheritance to purchase a desk, two dressers and a new bed.
12. On September 15, 2020, the agency issued a notice of decision to the Petitioner informing her that she was enrolled in Institutional MA for May 2020 with no monthly patient liability, for June 2020 with a monthly patient liability of \$1359.50 and for July 2020 with a monthly patient liability of \$1409.50. The notice also informed her that the agency determined there had been a divestment of \$9633 and imposed a divestment penalty period of 33 days from May 1, 2020 – June 2, 2020.

## 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); MA Handbook, § 17.2.1. Divestment does not impact on eligibility for standard medical services such as physician care, medications, and medical equipment (all of which are known as "MA card services" in the parlance). 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 (\$287.29 in 2020). MA Handbook, § 17.5.2.

In this case, the Petitioner's representative does not dispute that the Petitioner received \$9633 and that the transfer or spend-down of those funds cannot be adequately accounted for other than a statement that the Petitioner purchased some furniture. There is no documentation of these purchases.

Based on the information provided, I conclude the agency correctly determined the agency correctly determined there was a divestment of \$9633 and correctly imposed a divestment penalty period of 33 days from May 1, 2020 – June 2, 2020.

## CONCLUSIONS OF LAW

The agency correctly determined the agency correctly determined there was a divestment of \$9633 and correctly imposed a divestment penalty period of 33 days from May 1, 2020 – June 2, 2020.

**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 5<sup>th</sup> Floor, 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.

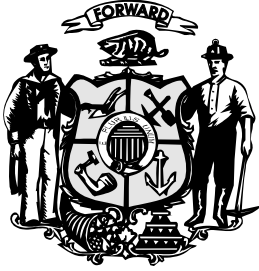
## **APPEAL TO COURT**

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 8th day of March, 2021

\s \_\_\_\_\_  
Debra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 8, 2021.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability