



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



**DECISION**  
Case #: MDV - 204093

**PRELIMINARY RECITALS**

Pursuant to a petition filed on January 10, 2022, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on February 3, 2022, by telephone.

The issue for determination is whether the agency correctly determined the start date of petitioner’s divestment penalty period.

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: Princeton Perry, IMA  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:  
Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Milwaukee County.

2. On October 23, 2021 petitioner applied for Institutional Long Term Care MA, as well as the Medicare Savings Programs.
3. On October 26, 2021 the agency began processing the application and requesting verifications of assets, expenses, and date of institutionalization.
4. On or about November 16, 2021 the agency was advised petitioner was residing in a CBRF which was determined to be a nonqualifying living arrangement for Institutional MA.
5. On December 17, 2021 petitioner was found functionally eligible for the Community Waivers program and was referred for that program.
6. The agency denied the petitioner's request for Institutional Long Term Care MA by notices dated November 17, 2021, November 19, 2021, and December 24, 2021 due to petitioner being over the asset limit. The December 24, 2021 notice also advised petitioner she was denied for Community Waivers effective December 17, 2021 due to petitioner being over the asset limit.
7. Petitioner filed an appeal on January 10, 2022.
8. Petitioner's available assets at the time of application and through December 31, 2021 included \$3994.22 in an IRA with [REDACTED], \$300 in a savings account, and \$10 in an irrevocable trust.
9. Petitioner's assets were reduced below \$2,000 during the month of January 2022.
10. On January 26, 2022 the petitioner's representative had a conversation with an agency representative. It was discovered at that time that the agency previously erroneously counted more than \$10 in assets in the irrevocable trust as available. The agency's representative then took the steps necessary to correct the petitioner's available asset amount and determine the correct amount of divested assets (assets that were added to the irrevocable trust).
11. On January 28, 2022 the agency issued a notice of decision to petitioner stating that her application for MA was denied effective December 1, 2021 due to petitioner being over the asset limit and denied for Community Waivers effective December 17, 2021 due to petitioner being over the asset limit.
12. On February 1, 2022 the agency issued a notice of decision to petitioner stating that she was denied for Community Waivers effective January 1, 2022 due to divesting assets in the amount of \$277,505.28 and the divestment penalty period was January 1, 2022-July 2, 2024.

### DISCUSSION

The non-exempt asset limit for a single person applying for/receiving Institutional MA or MA Waivers is \$2,000. See Wis. Stat. §49.47(4)(b)3g.e; see also *Medicaid Eligibility Handbook (MEH)*, §16.1, available online at [http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm#t=policy\\_files%2F32%2F32.1.htm](http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm#t=policy_files%2F32%2F32.1.htm). A person cannot give their assets away and receive less than fair market value in return to get under the asset limit.

A divestment is a transfer of assets for less than fair market value. See Wis. Stat. §49.453(2); *MEH* §17.1. A divestment or divestments made after 2008, and within 60 months before an application/review for MA may cause ineligibility for that type of MA. See Wis. Stat. §49.453(1)(f), Stats.; *MEH* §17.3. The ineligibility is only for nursing home care and community waivers services; divestment does not impact

eligibility for other medical services such as medical care, medications, and medical equipment. The penalty period is calculated in days which is determined by dividing the value of property divested by the average daily cost of nursing facility services. See Wis. Stat. §49.453(3)(b); *MEH* §17.3.2.

The parties agree that the petitioner divested \$277,505.28, resulting in a 914-day divestment penalty period. Petitioner disagrees as to the date on which the penalty period should start running. The agency's policy instruction on the penalty period start date is as follows:

### **Penalty Period Begin Date for Applicants**

The penalty period for an applicant begins on the date that meets all of the following:

- The person applies for institutional Medicaid or requests one of the Community Waivers programs (Family Care, Family Care Partnership, PACE, or IRIS).
- The person enters an institution or meets the appropriate LOC and functional screen criteria.
- The person meets all other Medicaid nonfinancial and financial eligibility requirements.

...

*MEH* §17.3.3 (emphasis added); see also Wis. Stat. §49.453(3)(a)2.

Applying this standard to the instant case rules out the institutionalization portions of the policy as this petitioner is not institutionalized. Her request for Community Waivers came on December 17, 2021 and she was found functionally (non-financially) eligible on that same date. However, she did not become financially eligible until January 1, 2022 when her assets were reduced below the \$2000 limit.

The petitioner requests an earlier start date because she believes she will not be able to continue to afford paying for her care in the CBRF in which she resides before the end of the penalty period. Petitioner's representative's argument was essentially that the whole MA application process was foreign to him and the agency was not helpful in helping him understand the process due to not having an assigned caseworker and the delays associated with the agency's call center. He was clearly frustrated with the process. His testimony was that he did not know petitioner was over the asset limit until the conversation he had with the agency's representative in late January 2022.

In sum, I find the agency acted correctly here. While I certainly understand the difficulty in navigating the MA application process, the agency can only address the information it receives. Her initial application was for Institutional MA and the agency processed that application accordingly. When it was discovered that she was not institutionalized, she was advised to request Community Waivers. The agency advised her on several occasions that she was being denied due to being over the asset limit. She did not appeal the earlier notices. Case Comments show that the agency was in contact with the petitioner's representative throughout the process even if it was a cumbersome process to connect with an agency representative. Beyond the legal allowances, petitioner's representative's argument is an equitable argument, and I lack the equitable powers to grant the relief sought. See *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). In other words, I cannot change the legal requirement about asset eligibility if I were to find it unfair. As dicta for petitioner's benefit, I add that the agency can advise a member about how assets can affect eligibility requirements but is not in a position to *direct* a member on how or when s/he should manage those assets.

As discussed at hearing, the petitioner may cure the divestment period penalty by showing that all the assets divested during the look back period, or amounts equal to their value, have been returned. See *MEH* §17.3.5.1. She may also request an undue hardship waiver. Undue hardship may apply when eligibility for long-term care services is denied when a divestment penalty period has been imposed. See

*MEH* §22.4.1. Undue hardship occurs if denial or termination of an applicant’s eligibility for coverage of long-term care services would deprive the person of medical care, which then endangers the person’s health or life, food, clothing, shelter, or other necessities of life. *Id.* The process for requesting the undue hardship waiver can be found at *MEH* §22.4.2.

**CONCLUSIONS OF LAW**

The agency correctly determined the start date of petitioner’s divestment penalty period.

**THEREFORE, it is ORDERED**

The petition for review herein 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.

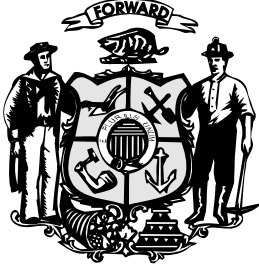
**APPEAL TO COURT**

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 24th day of March, 2022

\s \_\_\_\_\_  
Kelly Cochrane  
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 March 24, 2022.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability