



FH
[REDACTED]

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

In the Matter of

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

DECISION
Case #: MDV - 198284

PRELIMINARY RECITALS

Pursuant to a petition filed on March 9, 2020, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Walworth County Department of Human Services regarding Medical Assistance (MA), a hearing was held on May 21, 2020, by telephone.

The issue for determination is whether the agency correctly denied petitioner's undue hardship request.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED], ESS Lead
Walworth County Department of Human Services
PO Box 1005 County Rd NN
Elkhorn, WI 53121-1005

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Walworth County. He is currently residing in a long term care (LTC) facility.
2. On December 20, 2019 petitioner applied for MA with a backdate request to September 2019.
3. Thereafter, the agency processed the application and verification requests. On January 21, 2020 the agency issued a notice to petitioner advising him that he had a divestment penalty period of September 1, 2019 – July 15, 2020.
4. On February 13, 2020 petitioner requested an undue hardship waiver.
5. On February 17, 2020 the undue hardship waiver was denied.

DISCUSSION

A divestment occurs when a person gives away his assets for less than fair market value within five years of when he was institutionalized and when he applied for medical assistance. Wis. Stat. §49.453(1)(f); *Medicaid Eligibility Handbook (MEH)*, §§17.2.1, 7.3. The agency determined that petitioner had divested and noticed petitioner of the divestment penalty period. The petitioner’s authorized representative (AR) could not verify how the petitioner spent all of his assets and so divestment could not be disproven. However, transferring an asset for less than its fair market value does not affect eligibility if ineligibility would cause “undue hardship.” Wis. Admin. Code, §DHS 103.065(4)(d)4; *MEH* §17.4. The AR requested an undue hardship waiver accordingly.

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

MEH §22.4.1.

As part of requesting an undue hardship waiver, a member 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 where a community spouse refuses to cooperate with the application process, documentation of all attempts to get cooperation from the community spouse,
 - In cases of divestment, whether the assets are recoverable, and if so, the attempts that were made to recover the divested assets,
 - In cases when an individual is denied due to having more than \$750,000 in home equity, an explanation of why the home equity cannot be accessed

- In cases where an individual in a spousal impoverishment case is denied due to excess assets, an explanation of why the excess assets cannot be accessed.
- 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.
- **If the applicant or member is applying for HCBW**, including FamilyCare, FamilyCare Partnership, PACE, or IRIS he or she must submit an estimate of the cost of the long term care services needed to meet his or her medical and remedial needs (as determined by the waivers case manager) and an estimate of costs for food, shelter, clothing, and other necessities of life.

These two estimates must be compared to the applicant, member, or couple's income and assets. If the IM agency determines that the applicant or member does not have enough income and/or assets to pay for his or her long term care and other needs (i.e., food, shelter, etc.), consider the applicant or member's health to be endangered.

If the required documentation is not submitted with the request for an undue hardship waiver, send a written request for verification by completing a manual Request for Verification (DWSP-2303) and mailing it to the applicant or member, giving a verification due date of 10 calendar days from the date the request is mailed. If the applicant or member fails to submit the required verification within 10 calendar days after the request is mailed, deny the undue hardship waiver request and notify the applicant or member by sending a Notice of Denial of Benefits/Negative Change in Benefits (F-16001). The deadline to submit the required documentation may be extended for up to ten calendar days if the individual communicates to the agency a need for additional time or assistance to obtain verification.

MEH §22.4.5.

Here, the agency denied the undue hardship request because the request did not comply with the requirement in the *Medicaid Eligibility Handbook*, §22.4.5, that those currently institutionalized must include with the hardship request "a copy of the notification sent from the [long-term care] facility which states both the date of involuntary discharge and alternative placement location".

A representative of the LTC facility appeared at hearing and explained that they have not sent petitioner a notice of involuntary discharge because they have no safe place to discharge the petitioner to, and out of a sense of morality, they continue to provide him cares, despite the fact that he is not paying for his care and that his level of care does not require he be in a LTC facility. This is why they seek to get him MA-eligible

and find him an assisted living facility to where he can be discharged safely. As she testified, no such facilities will accept petitioner without a pay source, and so he applied for MA.

However, I do not find under the policy that the notice of discharge is required when the policy provides that he can either provide the notice of discharge 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” OR “that he or she will not have food, clothing, shelter, or other necessities of life.” *MEH* §22.4.5. The undisputed testimony at hearing was that petitioner has no assets, cannot engage in employment because of physical and cognitive impairments, if he were left to fend for himself in the community he would be at significant risk for harm or death, and would not have food, medications, shelter, clothing, utilities, or transportation. In addition, without MA to assist with his health and care, the testimony was that his life would be at risk.

Because he has established that it would be a hardship for him not to receive medical assistance, I am remanding this matter to the agency to find him eligible for the undue hardship.

CONCLUSIONS OF LAW

1. The agency incorrectly denied petitioner’s undue hardship request.
2. The petitioner is entitled to a hardship waiver as his health or life will be endangered if he does not receive medical assistance and he will not have food, clothing, shelter, or other necessities of life.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions that within 10 days of the date of this decision it find the petitioner eligible for a hardship waiver, and for medical assistance retroactive to September 1, 2019, if otherwise eligible.

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, 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.

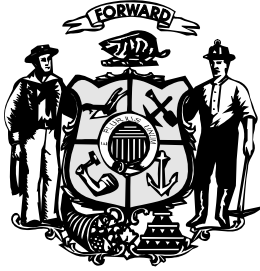
APPEAL TO COURT

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 _____ ~~day of June, 2020~~ 24th
day of June, 2020

/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 June 24, 2020.

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