



FH  
[REDACTED]

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

---

In the Matter of

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

**DECISION**  
Case #: MDV - 198638

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed on April 15, 2020, 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 May 21, 2020, at Waukesha, Wisconsin.

The issues for determination are:

1. Whether the agency correctly enrolled the Petitioner in community waivers effective February 25, 2020; and
2. Whether the agency correctly imposed a divestment penalty period of 254 days beginning February 25, 2020.

There appeared at that time and place 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]  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. In November 2018, an asset assessment was completed for the Petitioner and her husband.
3. On April 1, 2019, the Petitioner was enrolled in Family Care.
4. On May 15, 2019, the agency received a Change Report that the Petitioner's home was sold on May 6, 2019 and the Petitioner received \$156,199.30 from the sale of the home.
5. On June 10, 2019, the agency received a routing form from the Department of Aging reporting the Petitioner had sold her home, was over the asset limit from the sale of her home and would like to disenroll from community waivers. The agency also received information around this time that the Petitioner's spouse passed away on or about May 16, 2019.
6. On June 13, 2019, the agency issued a notice to the Petitioner's son (also her power of attorney) informing him that the Petitioner would be disenrolled from community waivers effective July 1, 2019 because "you told us you no longer want to get this benefit" and "you have asked us to stop giving you this benefit." The notice further informed the Petitioner's son that she was not eligible for SLMB+ because she had too much income. It informed him that she could become eligible for MA if she met a deductible of \$12,765.60 for the period of July 1, 2019 – December 31, 2019. The notice further informed the Petitioner's son of the right to appeal the agency determination by filing a request for a hearing with the Division of Hearings and Appeals no later than August 16, 2019.
7. On July 24, 2019, the agency received a Change Report of a promissory note in the amount of \$41,500.
8. On July 30, 2019, the agency received bank statements and copies of checks showing a payment from the Petitioner's account to her son on July 24, 2019 in the amount of \$73,094.26.
9. The Petitioner did not meet the deductible for the period of July 1, 2019 – December 31, 2019 so was not enrolled in MA during that period.
10. On January 29, 2020, a representative for the Petitioner contacted the agency to inquire about Petitioner's eligibility for MA programs.
11. On February 6, 2020, an application was submitted for the Petitioner. It was processed on February 25, 2020 with a referral for waivers.
12. On April 10, 2020, the agency received verification of Petitioner's gift of \$73,094.26 to her son on July 24, 2019.
13. On April 13, 2019, the agency issued a notice to the Petitioner's representative that a divestment penalty period of 254 days would be imposed for the period of February 25, 2020 – November 4, 2020. The only divestment counted by the agency is the gift to the Petitioner's son.
14. On April 15, 2020, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

### 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. 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. MA Handbook, § 17.5.2.

The dispute in this case is not whether the Petitioner's transfer of \$73,094.26 to her son was a divestment. Rather, the dispute is the date that the divestment penalty should begin. The Petitioner asserts that the agency erred in not processing the change reports submitted in July 2019 regarding the Petitioner's assets. The Petitioner asserts that the promissory note and divestment would have put her under the asset limit and the agency should have re-opened her case. She asserts that the agency should have imposed the divestment penalty period beginning July 30, 2019. The agency argues that the Petitioner did not have an open MA case in July 2019 and it could not impose a divestment penalty period until her case opened on February 25, 2020.

The governing statute for divestments is Wis. Stats., § 49.453. Subsection (3) addresses the divestment penalty period start date:

(3) Period of ineligibility.

(a) The period of ineligibility under this subsection begins on either of the following for an *applicant* for Medical Assistance:

...

2. In the case of a transfer of assets made on or after February 8, 2006, the first day of a month beginning on or after the look-back date during or after which assets have been transferred for less than fair market value, or *the date on which the individual is eligible for medical assistance and would otherwise be receiving institutional level care described in sub. (2) (a) 1. to 3. based on an approved application for the care but for the application of the penalty period*, whichever is later, and that does not occur during any other period of ineligibility under this subsection.

(ag) The period of ineligibility under this subsection for a transfer of assets made *at the time the individual is receiving long-term care services through Medical Assistance* begins on the first day of the month following the month in which the individual receives advance notice of the period of ineligibility.

Wis. Stats., § 49.453(3) (emphasis added).

The Petitioner asserts that the agency cited no legal authority for its position that she must be eligible for "full benefit MA" before the penalty period can be imposed. I disagree with the Petitioner's argument based on the language of Wis. Stats., § 49.453(3).

The Petitioner was disenrolled from community waivers effective July 1, 2019 and did not apply for or become eligible for any other long-term care services between July 1, 2019 and February 6, 2020. The Petitioner's son testified that neither he, the Petitioner or anyone else acting on behalf of the Petitioner requested that she be disenrolled from community waivers. The notice issued on June 13, 2019 clearly states that this was the reason that she was disenrolled. There was no timely appeal of that action by the Petitioner or her representative. Therefore, I have no jurisdiction at this time to find that the agency's action was in error. The notice also clearly states that she was not eligible for any MA programs effective July 1, 2019 unless she met a deductible during the period of July 1, 2019 – December 31, 2019. It is undisputed that she did not meet the deductible.

The Petitioner asserts that the agency should have acted on the reports of changes in her assets submitted in July 2019. The Petitioner had already been disenrolled at her request or the request of her representative by the time those change reports were submitted. Though the agency can re-open a case without a new application within 30 days, the evidence demonstrates that the Petitioner requested to disenroll and there was no contact from the Petitioner or her son to indicate that she wished to re-enroll or have her case re-opened. There was no attempt to appeal the disenrollment or file a new application. The Petitioner's son's testimony that there was no request to disenroll appears to be self-serving at this point in time.

There was no determination that the Petitioner was eligible for MA and she was not receiving any long-term care services through MA at the time she divested funds of \$73,094.26 to her son on July 24, 2019. Therefore, under Wis. Stats., § 49.453(3)(ag), the divestment penalty period could not begin on July 30, 2019 as asserted by the Petitioner. Rather, in accordance with Wis. Stats., § 49.453(3)(a)2, the agency correctly imposed the divestment penalty period on February 25, 2020 when the Petitioner was determined to be eligible for MA and would otherwise receive services but for the divestment penalty.

The Petitioner further alleges that her current Family Care enrollment date should be backdated to February 6, 2020 due to agency delay and error related to the July 2019 asset change reports. The Petitioner's application was filed on February 6, 2020. It was processed by the agency within 30 days in accordance with MA Handbook, § 2.7. I find no delay or error by the agency and conclude the Petitioner was correctly enrolled after the agency processed the application and determined her functional and financial eligibility on February 25, 2020.

### CONCLUSIONS OF LAW

1. The agency correctly imposed a divestment penalty period of February 25, 2020 – November 4, 2020.
2. The agency correctly enrolled the Petitioner in community waivers effective February 25, 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.

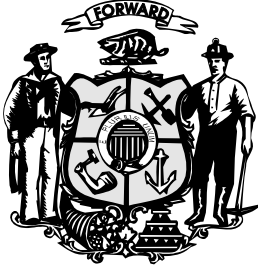
## APPEAL TO COURT

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 29th day of June, 2020

\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 June 29, 2020.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability