



FH  
[REDACTED]

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

---

In the Matter of



**DECISION**  
Case #: MDV - 207202

---

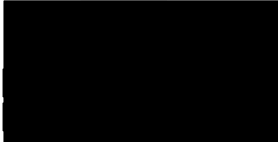
**PRELIMINARY RECITALS**

Pursuant to a petition filed December 20, 2022, under Wis. Stat., §49.45(5), to review a decision by the Washburn County Dept. of Social Services regarding Medical Assistance (MA), a hearing was held on February 15, 2023, by telephone.

The issue for determination is whether the agency correctly determined a divestment penalty.

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By: [REDACTED]  
Washburn County Dept. of Social Services  
PO Box 250  
Shell Lake, WI 54871

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Barron County. At the time of her MA application she resided in Washburn County and the actions described here were done by the Northern IM Consortium based in Douglas County.
2. Petitioner's son [REDACTED] has had her power-of-attorney for petitioner since 2007.

3. An application for nursing home MA was filed on petitioner's behalf in August, 2022, [REDACTED] acting as authorized representative. During the process the agency learned that petitioner's California home was sold in June, 2021, with proceeds of some \$166,000.
4. Almost immediately after the proceeds were deposited, [REDACTED] began spending the money down. Approximately \$35,000 were used to pay off petitioner's debts; those funds are not included in the divestment determination. Important individual transactions that were determined to be part of a divestment, all in 2021 except as noted, were as follows:
  - (1) June 17 - \$7,700 to reimburse petitioner's grandson for purchase of a [REDACTED] Fusion that he used while helping to care for her in 2019.
  - (2) June 17,18 - \$25,108 to pay for [REDACTED] debt. The primary source of this debt was for pay off debts related to a California time-share to have the time-share transferred to his name to avoid foreclosure. The transfer occurred in 2017, but the debt was still owing in 2021.
  - (3) June 17 - \$10,935 to pay for [REDACTED] wife's debt. This payment paid off a loan for her [REDACTED].
  - (4) June 21 - \$44,881. This payment was for a 2021 [REDACTED] that was put in [REDACTED]'s name, intended to be used to transport petitioner while she was living with [REDACTED] and his wife.
  - (5) August 12 - \$4,738. This was the cost of repairing a garage roof in which petitioner's belongings were being stored.
  - (6) January 18, 2022 - \$3,334. This was to purchase porch and patio furniture, purportedly to give petitioner space to sit outside the house.
5. There also were numerous smaller transactions listed as "room and board." These were intended to compensate [REDACTED] and his wife for caring for petitioner while she lived with them after moving with them from California in May, 2020. Also listed were payments to AT&T for cell phones not belonging to petitioner, payments for appliances and a new computer for [REDACTED] home, and payments for a grandson's auto repair and a granddaughter's headstone.
6. The agency determined that \$115,169.34 was divested between June, 2021 and January, 2022. By a notice dated November 30, 2022, the agency informed petitioner that she was eligible for MA effective August 1, 2022, but that she had a 374-day divestment penalty period running from August 1, 2022 through August 9, 2023.

## 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, Appendix 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 (\$307.40 in 2022). MA Handbook, App. 17.5.2.

There are exceptions to the divestment penalty. A transfer is not a divestment if it is made exclusively for a purpose other than to become eligible for MA. Wis. Admin. Code §DHS 103.06(4)(d)2.b; MA Handbook, App. 17.2.6.1. The burden is on the claimant to show the lack of intent. According to the Handbook provision, circumstances that could show non-intent include (1) the person kept sufficient resources to cover five years of long-term care, (2) an unexpected event caused an unforeseen need for

long-term care (such as a seemingly healthy person having a stroke), (3) the person had a pattern of gifting, (4) payments were made to dependent relatives. The Handbook provision allows that these are not to only circumstances that could prove non-intent.

There also is a provision for payments for care provided by relatives that impacts this case. Wis. Stat., §49.453(5); MA Handbook, App. 17.2.6.10. Payments for care provided can be excused if the total is less than 10% of a Community Spouse Asset Share. That amount right now would be \$13,470, and thus, since the total divestment amount is far more than that figure, the provision would not apply. If the total is more than the 10% threshold, the payments can be excused if: (1) the services directly benefited the institutionalized person, (2) the payment did not exceed reasonable compensation for the services, and (3) there was a written, notarized agreement between the parties signed before the services began.

Under these rules, the payments given to [REDACTED] and his wife for their care of petitioner must be considered as divestments. Even leaving out the large payments mentioned in Finding of Fact no. 3, the payments for “room and board” amounted to far more than \$13,470, so the only way they could be excused is if there were a written agreement at the time the room and board were provided. Although I empathize with the situation they were put into, there simply is no way that I can ignore the Wisconsin Statute requiring such an agreement.

Payments for family cell phones, for upgrades of appliances and computer equipment, and payments for the grandchildren also must be considered divestments. Although petitioner herself might have benefitted somewhat from the upgrades because she was living in the home, the upgrades primarily benefited [REDACTED] and his wife.

I now will discuss the large payments mentioned in Finding of Fact no. 3. As background, petitioner lived in California. She suffered a urinary tract infection in March 2019, resulting in her needing assistance in daily living. At that point it was discovered that she was a hoarder, and her home was almost unlivable. Nevertheless, her grandson who lived nearby initially took charge of caring for her, but in September, 2019, the grandson asked that [REDACTED] take over. He went to California in 2019, and stayed there until May, 2020, when he brought petitioner back to Wisconsin after the Covid outbreak made it untenable to stay in California. Petitioner lived with [REDACTED] and his wife until March, 2022, when petitioner was hospitalized with another infection. Petitioner went to a nursing home after leaving the hospital.

The California house was sold in June, 2021, and [REDACTED], with power-of-attorney, almost immediately began spending the proceeds. I will discuss each of the big payments.

First, he paid off a car loan for his nephew’s care, to reimburse him for his care of petitioner from March through September, 2019. There was no written agreement between petitioner and the nephew, and from the testimony it is evident that the majority of the car’s usage was for driving to and from work in [REDACTED], not driving to petitioner’s home. It was a gift to pay off the car loan, and thus a divestment.

Second, [REDACTED] paid off a debt for a time share in California. Documents show that in 2015 he and petitioner purchased a time-share together. He testified that in 2017 he had to put it in his own name because petitioner failed to make required payments. The \$25,000 debt he repaid in June, 2021 essentially was the cost of putting the time-share in his own name. I cannot excuse that payment from the divestment penalty. While [REDACTED] incurred the debt because petitioner failed to make payments, the time-share was always in his name, first jointly and then alone. He chose to put the property into his own name rather than allow it to be foreclosed. Thus paying off his debt fit the definition of divestment – a transfer from the MA applicant for which she received no benefit.

Third, ■■■ paid off his wife's car loan. Again, there was no consideration for the pay-off, and petitioner received nothing in return except for non-contracted care.

Fourth, ■■■ purchased a \$44,000 vehicle to transport petitioner. Had he put the vehicle in petitioner's name, it would not have been divestment and would have been an exempt asset. ■■■ testified that he was told to put the vehicle in his name because petitioner could not drive it; whoever told him that gave him bad advice. From a legal standpoint, ■■■ purchased a vehicle for himself using petitioner's money.

Finally, there were two large transactions in which ■■■ put a new roof on his garage where petitioner's belongings were being stored, and he purchased patio and porch furniture so petitioner would have places to sit outside the home. While those might have been motivations for the purchases, ultimately the purchases were for ■■■'s home, and the value to petitioner was secondary. The belongings did not have to be stored in the family garage; money from the home proceeds could have been used to rent a storage unit. Again, I can find no fault in the agency's divestment determination.

The only other possibility is that the spending of the home proceeds was done for purposes exclusively for purposes other than to qualify for MA. I simply cannot make that stretch. The sole reason that ■■■ became involved in petitioner's care was that she was incapable of caring for herself after the March, 2019 infection. He had to bring her home because she was unable to care for herself. He spent the home proceeds almost as soon as he received them. It is possible that he did not expect petitioner to go into the nursing home as soon as she did, but the probability was there, and the speed at which the money was spent is an indicator that he knew the probability was there. I conclude, therefore, that the agency correctly determined that \$115,169.34 was divested.

■■■ still can request a hardship waiver. That is not part of this decision. He needs to be aware, however, that a consideration in a hardship waiver is whether efforts have been made to get the property back.

### CONCLUSIONS OF LAW

The agency correctly determined that \$115,169.34 of petitioner's assets were divested prior to her application for nursing home MA.

**THEREFORE, it is**

**ORDERED**

That the petition for review is hereby 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 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

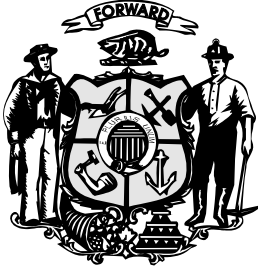
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 Madison,  
Wisconsin, this 23rd day of February, 2023



\s \_\_\_\_\_  
Brian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



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

Brian Hayes, Administrator  
5<sup>th</sup> Floor North  
4822 Madison Yards Way  
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 February 23, 2023.

Washburn County Department of Social Services  
Division of Health Care Access and Accountability