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

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In the Matter of



**DECISION**  
Case #: MDV - 208396

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**PRELIMINARY RECITALS**

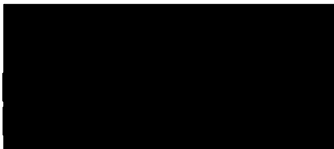
Pursuant to a petition filed on April 21, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services regarding Medical Assistance (MA), a hearing was held on June 19, 2023, by telephone.

The issue for determination is whether the agency correctly determined that petitioner was subject to an MA divestment penalty.

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: Dana Lee

La Crosse County Department of Human Services  
300 N. 4th Street  
PO Box 4002  
La Crosse, WI 54601

**ADMINISTRATIVE LAW JUDGE:**

Jason M. Grace  
Division of Hearings and Appeals

## **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County. Her adult son ([REDACTED]) has acted as her Power of Attorney since at least October 12, 2022.
2. On February 6, 2023, an application for nursing-home MA was submitted on petitioner's behalf.
3. During the application process, the agency determined that petitioner had divested \$13,343.01 during the 60 month look-back period. By notice dated March 24, 2023, the agency informed petitioner that she was eligible for nursing home MA but had a 43 day divestment penalty period running from February 1, 2023 through March 15, 2023.
4. The agency was later provided with updated information that resulted in the divestment penalty being reduced. By notice dated June 16, 2023, the petitioner was informed that the divestment penalty was 19 days running from February 1, 2023 – February 19, 2023.
5. The divestments at issue at hearing fell into two main groups: (1) gifts to family to mark traditional holidays and (2) miscellaneous transfers to [REDACTED] (petitioner's son) and daughter. The transactions at issue are as follows:
  - Gifts to children and grandchildren on traditional holidays (Christmas, birthdays, Father's Day, and Easter): \$100.00 in 2018, \$1,800.00 in 2019, \$1,750.00 in 2020, and \$1,348.29 in 2021. Total amount was \$4,998.29.
  - Misc. to [REDACTED]: \$800.00 in 2018, \$700.00 in 2019, and \$400.00 in 2020. Total amount was \$1,900.00.
  - Misc. to Daughter: \$100 in 2020.
6. Petitioner filed an appeal contesting the divestment penalty.

## **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, App. 17.1. 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 divestment 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, App. 17.3. The current daily nursing home rate is \$308.71. MA Handbook, App. 39.4.6 (Release 23-01). There is a 60 month (5 year) look back period for divestments. MA Handbook, App. 17.2.2.1.

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. Id. That burden requires the person to:

... present evidence that shows the specific purpose and reason for making the transfer and establish that the resource was transferred for a purpose other than to qualify for Medicaid. Verbal assurances that they were not trying to become financially eligible for Medicaid are not sufficient. Take into consideration statements from physicians, insurance agents, insurance documents, and bank records that confirm the person's statements.

Id. Circumstances that could show non-intent include a pattern of gifting. MA Handbook, App. 17.2.6.1.4. To meet that exception the following must be shown:

If the institutionalized person or their spouse had a pattern of gifting money, such as to family members or charities, prior to the look back period, similar divestments during the look back period are allowed and don't result in a penalty period if **both** of the following conditions are met:

- There is no gap in the years or occasions the gifts occurred.
- The total value of yearly gifts given as part of a pattern don't exceed 15% of the individual or couple's annual gross income in the year the gifts were given.

This allowed divestment is not limited to gifts made on traditional gift-giving occasions such as birthdays, graduations, and weddings. It can include a pattern of giving to assist family members with educational or vocational goals.

**Example 4** Jacques is applying for long-term care. He has five grandchildren. Two of Jacques's grandchildren graduated during his look back period, and he gave them each \$1,000 as graduation gifts. The amounts of those graduation gifts did not exceed 15% of his income in the years they were given. Jacques can also show that, prior to the look back period, he gave similar gifts to two of his other grandchildren when they graduated from high school. He has therefore shown that the gifts given to his grandchildren during the look back period were part of a "pattern of gifting." The gifts are an allowed divestment and don't result in a penalty period.

Id.

In this case, the parties agreed that the yearly gifts did not exceed 15% of the petitioner's annual gross income. At issue was whether there was a pattern of gift giving with no gaps in years or occasions. I find that the petitioner, by her son, has established that the \$4,998.29 for 2018 through 2021 were part of a pattern of gifting to family members (children and grandchildren) for holidays (Christmas, birthdays, Easter, and Father's Day), and were not a divestment for purpose of qualifying for nursing-home MA. At hearing, the son established a pattern of similar gifting by petitioner prior to the look-back period. The \$100.00 transfer at issue for 2018 was shown to only comprise a small portion of the total amount gifted by the petitioner to her family for holidays that year. As such, there were no gaps in year or occasion, and the yearly holiday gift amounts remained reasonably consistent.

As to the transactions labeled as "Misc. to [REDACTED]" and "Misc. to Daughter," I find that the petitioner has failed to establish that they were made for a purpose other than to become eligible for MA. It appears that the son argued they were reimbursements for travel expenses incurred by him and his sister to visit petitioner and for them to go on trips together. The record does not contain sufficient evidence that such trips occurred or that the identified transfers were for the specific reason and purpose argued. As such, I will remand this matter back to the agency to reduce the total divestment amount to \$2,000.00 and the divestment penalty to 6 days.

### CONCLUSIONS OF LAW

1. The petitioner's 2018 through 2021 gifts to family members for holidays totaling \$4,998.29 were part of a pattern of gift-giving and do not amount to a divestment.
2. The petitioner's 2018 through 2020 payments labeled as "Misc. to [REDACTED]" and "Misc. to Daughter" totaling \$2,000.00 amount to divestments for purposes of eligibility for nursing-home MA.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency to amend the total divestment amount to \$2,000.00 and the penalty for nursing-home MA to 6 days (\$2,000.00 divided by \$308.71). The agency shall take all administrative steps to complete this task within 10 days of this decision.

### **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**

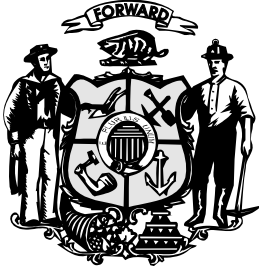
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 29th day of June, 2023



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Jason M. Grace  
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 29, 2023.

La Crosse County Department of Human Services  
Division of Health Care Access and Accountability