



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
[Redacted]
[Redacted]

DECISION

Case #: MDV - 208757

PRELIMINARY RECITALS

Pursuant to a petition filed on May 18, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Marinette County Department of Human Services regarding Medical Assistance (MA), a hearing was held on July 12, 2023, by telephone.

The issue for determination is whether

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]

Petitioner's Representative:

[Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: Kelly Bruette
Marinette County Department of Human Services
Wisconsin Job Center Suite B
1605 University Drive
Marinette, WI 54143

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [Redacted]) is a resident of Oconto County.

2. On February 21, 2023, petitioner applied for Long Term Care Medicaid benefits.
3. On March 27, 2023, a divestment was determined and entered.
4. On March 28, 2023, the agency mailed to petitioner paperwork for claim undue hardship, with a deadline of April 16, 2023.
5. On April 28, 2023 the agency received the petitioner's undue hardship claim.
6. On May 23, 2023, the Division received petitioner's requested for hearing by U.S. Mail, postmarked May 19, 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. MA Handbook, App. 17.5.2.

A divestment penalty can be waived when it would deprive the person of care that could endanger the person's life or health. Handbook, App. 22.4.1. If an undue hardship waiver request is filed within 20 days of the undue hardship letter, the entire divestment period will be waived. Handbook, App. 22.4.4.1. The person must show (1) that the property is not recoverable, and (2) if she is currently institutionalized, notification of involuntary discharge. Handbook, App. 22.4.5.

Undue hardship exceptions can be made when there has been a divestment. Medicaid Eligibility Handbook § 22.4. A divestment penalty period must be waived when the imposition of the penalty period deprives the individual of either medical care such that the individual's health or life would be endangered or food, clothing, shelter, or other necessities of life. Id.

Nothing about the divestment is disputed here. It is also undisputed that petitioner showed grounds for the waiver. Petitioner's request for an Undue Hardship Waiver was granted by the respondent, with an effective date of April 28, 2023. Petitioner argues that the waiver should be backdated to cover then entire divestment penalty period.

Petitioner's representative stated that when petitioner's property was sold in 2019, petitioner realized proceeds in the amount of \$80,000, however, unauthorized individuals took advantage of petitioner and diverted the funds for their own use, making them unavailable for petitioner's use and qualifying him for an undue hardship waiver of the divestment penalty period.. The agency agrees that there is a factual basis for an undue hardship waiver. It approved the waiver effective the date it was received, April 28, 2023. The agency's position is that the waiver request was filed late and that it must follow program rules and make it effective the date of receipt, rather than an earlier date.

The entire issue in dispute is the effective date of the undue hardship waiver. The law and the agency's rules on this question are clear. If a request for an undue hardship waiver is received by the agency without 20 calendar days of the undue hardship letter mailing date, and the request is approved, the effective date of the wavier is, for divestment, that the entire divestment penalty period will be waived. See Medicaid Eligibility Handbook (MEH) Sec. 22.4.4.1. IF the undue hardship waiver requested is received later than 20 calendar days after the notification is mailed, the effective date is the date of receipt by the agency. See MEH 22.4.4.2.

Petitioner's representative did not dispute the notice mailing date or that the waiver request was filed late. He explained that he was trying to help his brother, the petitioner, and did the best he could. He was credible and sympathetic. However, the rules that the agency must follow do not provide for deviation from the deadlines because of someone's personal situation, even if the result seems unfair or harsh in the particular circumstances. Similarly, I cannot order the agency to extend the deadline or change the rules out of sympathy for petitioner or his representative. The Division's hearing examiners lack the authority to render a decision on equitable arguments. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. The agency correctly applied the law to the facts of this case to made the undue hardship waiver effective the date it was received.

CONCLUSIONS OF LAW

The agency determined that petitioner qualified for an undue hardship waiver. Because the request was filed after the deadline, the correct effective date is the date of receipt. The agency correctly determined that petitioner's undue hardship waiver was effective April 28, 2023, because it was received on that date, which was after the deadline for filing it.

THEREFORE, it is

ORDERED

That the petition for review 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, 5th 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).

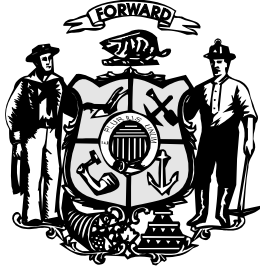
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 27th day of July, 2023



\s _____

Beth Whitaker
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705-5400

Telephone: (608) 266-7709
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 27, 2023.

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