



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: MDV - 215995

PRELIMINARY RECITALS

Pursuant to a petition filed on November 18, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services regarding Medical Assistance (MA), a hearing was held on December 12, 2024, by telephone.

The issue for determination is whether the agency erred in its determination of a divestment for petitioner in the amount of \$10,968.31.

There appeared at that time 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: M. Hurst

Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

John Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner applied for Long-term care MA on 5/14/24.
3. The application stated that she sold a property on 1/12/21 for 26,000 which had a fair market value of \$34,000.
4. The agency sought additional information about the sale and the use of the proceeds from the sale.
5. The property was sold for \$25,531.69.
6. Tax records reflect an assessed value for the property in 2020 of \$34,100, and an estimated fair market value of \$36,500.
7. The agency determined that the difference was a divestment in the amount of \$10,968.31.

DISCUSSION

A divestment occurs when an institutionalized individual, his spouse, or another person acting on his behalf, transfers assets for less than fair market value, on or after the individual's "look-back date." Wis. Stat. § 49.453(2)(a). "Fair market value" is an estimate of the prevailing price an asset would have had if it had been sold on the open market at the time it was transferred. Medicaid Eligibility Handbook (MEH) § 17.2.1. The "look-back date" is defined as 36 months before, or with respect to trusts, 60 months before, the first date the individual is both institutionalized and an MA applicant. MEH § 17.3.

If such a transfer occurs, the individual is ineligible for MA for nursing home services for a number of months determined by totaling the value of all assets transferred during the look-back period and dividing that amount by the average monthly cost to a private patient of nursing facility services at the time of the MA application. MEH § 17.5. The ineligibility period begins with the month of the first divesting transfer of assets.

A parallel divestment definition is found at Wis. Admin. Code § DHS 103.065(4), and states in the parts relevant here, as follows:

(4) DIVESTMENT. (a) *Divestment resulting in ineligibility.* An institutionalized individual or someone acting on behalf of that individual who disposes of resources at less than fair market value within 30 months . . . immediately before or at any time after the date the individual applies for MA while institutionalized, shall be determined to have divested. . . (Emphasis added).

A divestment is not a bar to MA eligibility where:

(d) *Circumstances under which divestment is not a barrier to eligibility.* An institutionalized individual who has been determined to have made a prohibited divestment under this section shall be found ineligible for MA as defined under s. DHS 101.03 (95) unless:

1. The transfer of property occurred as the result of a division of resources as part of a divorce or separation action, the loss of a resource due to foreclosure or the repossession of a resource due to failure to meet payments; or
2. It is shown to the satisfaction of the department that one of the following occurred:
 - a. The individual intended to dispose of the resource either at fair market value or for other valuable consideration;

- b. **The resource was transferred exclusively for some purpose other than to become eligible for MA;**
- c. The ownership of the divested property was returned to the individual who originally disposed of it; or
- d. The denial or termination of eligibility would work an undue hardship. In this subparagraph, “undue hardship” means that a serious impairment to the institutionalized individual’s immediate health status exists.

Wis. Adm. Code § DHS 103.065(4)(d) (emphasis added).

In a Fair Hearing such as this, the petitioner has the burden of proof to establish that a denial action taken by the county, such as the denial of MA due to a divestment of assets was improper given the facts of the case. See 20 C.F.R. §§416.200-416.202; see also, 42 C.F.R. §435.721(d). The burden of proof is on the applicant or recipient to show that one of the above circumstances exists.

In this case, the facts are not in dispute as stated above. Petitioner explained that the sale was made to petitioner’s son, the brother of her representative at hearing. He explained that the property was sold in order to satisfy a loan that had been incurred by petitioner. Petitioner’s representative explained that the property was “landlocked” without street access and would likely have little value to others except the petitioner’s son to whom it was sold as it was connected to his existing property.

Given these unique circumstances, I am persuaded that the value of the property was lower than what was assessed as reflected on tax records. I also note that I am persuaded that the sale of the property was not for the purpose of getting petitioner to qualify for MA. For both of these reasons I find that this was not a divestment.

CONCLUSIONS OF LAW

1. The property was not transferred for less than fair market value; and,
2. The property was not transferred in order to make petitioner eligible for MA.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with direction to reverse the determination of a divestment. This action must be completed withing 10 days.

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.

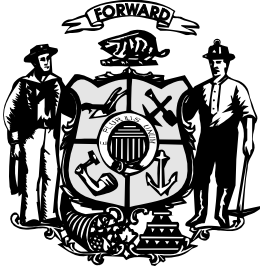
APPEAL TO COURT

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 7th day of February, 2025

\s _____
John Tedesco
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 February 7, 2025.

Brown County Human Services
Division of Health Care Access and Accountability