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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**AMENDED DECISION**  
Case #: MDV - 216455

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on December 31, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane Cty. Dept. of Human Services regarding Medical Assistance (MA), a hearing was held on May 7, 2025, by telephone.

This Decision is being amended to provide greater clarity in the Discussion section. Neither the Conclusion of Law nor the Order are being changed from the original Decision.

The issue for determination is whether the agency erred in its decision to deny the 12/9/24 request for hardship waiver related to a divestment penalty.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Attorney Daniel J. Krause  
Krause Estate Planning & Elder Law Center  
116 Spring St  
Oregon, WI 53575

Respondent:

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

By: Kristen Dukes  
Dane Cty. Dept. of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

John Tedesco  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner has cognitive disability due to a stroke.
3. She resides at [REDACTED] in Stoughton, Wisconsin.
4. Petitioner has a daughter, [REDACTED].
5. [REDACTED] is petitioner's power of attorney.
6. On 7/8/24 the agency sent notice to petitioner informing her that her assets placed her over the asset limit for Medicaid. The counted assets included an \$85,000 property.
7. By [REDACTED] filed on 7/3/24 in Dane County, [REDACTED] caused the property to be transferred from her mother to herself.
8. On 8/9/24, [REDACTED] filed an undue hardship waiver request on behalf of her mother.
9. This request was denied.
10. On 8/19/24 the agency sent notice to petitioner informing her of a divestment penalty of 255 days equal to \$80,500.
11. On 11/26/24 the agency sent notice to petitioner informing her of a divestment penalty of 255 days equal to \$80,500.
12. On 12/9/24 the facility, on behalf of petitioner, filed an undue hardship waiver request related to the divestment penalty.
13. On 12/23/24 the agency sent to petitioner a denial of the requested hardship waiver.
14. On 12/24/24 the agency sent notice to petitioner informing her of a divestment penalty of 255 days equal to \$80,500.
15. On 2/20/25 [REDACTED] sent petitioner an Involuntary Discharge Notice indicating petitioner's outstanding balance of \$71,870. The Notice indicated petitioner would be discharged by 3/22/25.
16. As of this date, petitioner had not been discharged and the outstanding balance exceeds what was noted in the Notice.
17. Petitioner's hardship penalty has passed and the facility is now being paid by Medicaid funds.

### **DISCUSSION**

An undue hardship waiver may be requested when eligibility is denied because a divestment penalty period has been imposed. MEH § 22.4.1. Undue hardship occurs if denial or termination of an applicant's or member's eligibility for coverage of long-term care services would deprive the person of any of the following:

- Medical care, which then endangers the person's health or life
- Food
- Clothing
- Shelter
- Other necessities of life

Id.

An applicant or member (or his or her authorized representative, power of attorney, or legal guardian) must submit both of the following verifications of undue hardship (unless otherwise noted):

- A statement signed by the applicant or member (or his or her authorized representative) which describes the following:

...

- In cases of divestment, **whether the assets are recoverable**, and if so, the attempts that were made to recover the divested assets

...

- Proof that an undue hardship would exist if eligibility is terminated or denied or the divestment penalty period is applied (required for all four situations to which Undue Hardship policy may apply) as follows:
  - If the applicant or member is currently institutionalized, he or she must submit a copy of the notification from the long term care facility which states both of the following:
    - The date of involuntary discharge
    - An alternative placement location
  - Or other proof that if the undue hardship waiver is not approved, the applicant or member will:
    - Not receive medical care resulting in his or her health or life to be endangered
    - He or she will not have food, clothing, shelter, or other necessities of life.

#### MEH § 22.4.5.

In this case the petitioner divested assets by transferring real estate to her daughter at less than market value. It seems undisputed that the transfer was facilitated by her daughter as the POA for petitioner. The two undue hardship waiver requests were denied because the agency determined that the property is actually recoverable by petitioner since her daughter, the POA, now has it in her possession.

The problem, however, is that [REDACTED], the daughter, has apparently refused to transfer the property back to her mother so that her mother can pay her nursing home bill. [REDACTED] has also apparently refused to pay the bill herself.

At this point, the nursing home has an outstanding bill that has not been paid in excess of \$80,000. That said, the nursing home has not discharged petitioner. The divestment period has now lapsed.

At this point, if the agency's denial of the waiver is upheld then the nursing home will not be paid, [REDACTED] will keep the ill-gotten property, and petitioner may possibly need to leave [REDACTED] due to the excessive arrears. If the waiver is now approved then the nursing home will be paid, [REDACTED] will keep the ill-gotten property, and petitioner will continue to live in the nursing home.

In either case, it is clear to me that [REDACTED] acted only in her own interests along the entire line of affairs. I am hopeful that Adult Protective Services or law enforcement have been informed of [REDACTED]'s actions which have unjustly enriched herself and were clearly outside of her fiduciary obligations as a power of attorney for her mother. I do not know if the DHS can pursue [REDACTED] later in an estate recovery action, but this too should be explored.

All that said, the facts in this case meet the requirements of a hardship waiver. Petitioner seemingly had nothing to do with, and may not even be aware of, what may be fraud by her daughter. But, because

██████████ is apparently without morals and ethics, the property is not recoverable. The petitioner here is ██████████, and not ██████████. The requirements of the hardship waiver are met.

### CONCLUSIONS OF LAW

Because the property divested is not recoverable, the undue hardship waiver should be approved.

**THEREFORE, it is**

**ORDERED**

That the matter is remanded to the agency with direction to approve the undue hardship waiver request dated 8/9/24 and reverse the divestment penalty of \$80,500 in its entirety; funds should be disbursed as appropriate to cover the outstanding balance at ██████████ in Stoughton, Wisconsin. This action must be completed 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.

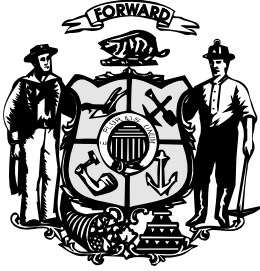
### **APPEAL TO COURT**

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 6th day of June, 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 June 6, 2025.

Dane Cty. Dept. of Human Services  
Division of Health Care Access and Accountability  
Attorney Daniel Krause