



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: MDV - 220057

PRELIMINARY RECITALS

Pursuant to a petition filed September 18, 2025, under Wis. Stat., §49.45(5), to review a decision by Dodge County Human Services regarding Medical Assistance (MA), a hearing was held on November 5, 2025, by telephone.

The issue for determination is whether gifts given to petitioner's daughters can be considered exceptions to the divestment rules.

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

Atty. Douglas W. Plier
Plier Law Office
318 E Lake St
Horicon, WI 53032

Respondent:

Department of Health Services
201 E. Washington Ave.
Madison, WI 53703

By: Chandler Zwieg
Dodge County Human Services
199 Cty Rd DF
Juneau, WI 53039

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County.

2. An application for Community Waivers MA was filed on petitioner's behalf on June 25, 2025. The application noted that petitioner gifted \$5,000 to each of her three daughters on October 8, 2023.
3. Petitioner has lived in an assisted living facility since August 26, 2018. Initially the cost was paid by a long-term care insurance policy taken out by petitioner. The insurance coverage lapsed in December, 2021 when the maximum payment total was reached. Petitioner then started paying out of her own assets. She paid \$196,772 of her assets between December, 2021 and June, 2025, including \$101,653 after the \$15,000 in gifts to her daughters.
4. Petitioner gave the gifts to her daughters because one of them became financially strapped and needed the \$5,000 to cover expenses. She gave the other daughters \$5,000 each to be fair.
5. The county agency determined that petitioner was ineligible for long-term care MA from the period July 24 to October 7, 2025, due to a \$26,160 divestment. A notice of the action was sent to petitioner on August 8, 2025.
6. Petitioner filed a Fair Hearing request contesting the agency's divestment finding pertaining to the \$15,000 in gifts to her daughters. Petitioner did not contest the remaining \$11,160 divestment determination.

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 and community waivers 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 17.1. Divestment does not impact 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 (\$340.99 in 2025). MA Handbook, App. 17.3.2.

At issue is the divestment exception found in the MA Handbook, App. 17.2.6.1:

A divestment that occurred in the look back period or any time after does not affect eligibility if the person who divested can show that the divestment was not made with the intent to qualify for Medicaid.

The person must 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.

Any of the following circumstances are sufficient to establish that the institutionalized person or community spouse transferred resources without an intent to qualify for Medicaid. This list is not intended to be all-inclusive; in other situations, the person's intent must be evaluated on a case-by-case basis to determine whether a divestment occurred.

Included in the list of circumstances that establish a lack of intent are that the person has sufficient resources to cover five years of long-term care, the need for long-term care was unexpected when the transfer was made, and the person had a pattern of gifting. The other exceptions do not apply here.

The county worker determined that petitioner did not meet an exception because (1) petitioner did not have sufficient funds to cover five years of long-term care, and (2) the need for long-term care was expected because petitioner already was in assisted living when the gifts were made and already was using her assets to cover the cost (the long-term care insurance lapsed in December, 2021, and the gifts were made in October, 2023). There was no pattern of gifting.

Petitioner did not testify at the hearing. Her daughter testified that the sole reason for making the gifts was to alleviate financial stress for one of her daughters. The other \$10,000 was given in fairness to the other daughters.

The language of Wis. Admin. Code, §DHS 103.065(4)(d)2.b is perhaps the most telling for the case. It provides that a divestment is not a barrier to eligibility if it is shown that the “resource was transferred exclusively for some purpose other than to become eligible for MA.” That leads to the conclusion that if MA eligibility was considered at all, even if it was not the primary factor, the transfer could be considered a barrier to eligibility.

Here there is no direct evidence of petitioner’s state of mind when the transfer was made. I have no doubt that the primary reason for the transfer to her financially strapped daughter was to help her out, not to eventually receive MA. However, I cannot find that it was exclusively for reasons other than MA. Testimony from petitioner’s daughter (one of the other two, not the financially strapped one) was that the family attempted to get petitioner to protect her assets for the potential need for long-term care, and she refused, insisting that she had the responsibility of paying for her own care. It follows that petitioner almost certainly would have been aware of the interplay between her use of the assets and her potential MA eligibility.

It is the applicant’s burden to show that the transfers exclusively were for reasons other than MA eligibility. It has not been established that MA was not a consideration when the transfers were made, especially given that petitioner already was using her assets to pay for care, and that the assets covered care for less than two years after the transfers were made. I conclude, therefore, that the agency’s determination that the \$15,000 transferred were divestments subject to the penalty period described in Wis. Stat., §49.453.

CONCLUSIONS OF LAW

The county agency correctly determined that \$15,000 gifted to petitioner’s daughters less than two years prior to her application for long-term care MA was subject to a divestment penalty period because it was not shown that the transfers were made exclusively for reasons other than MA eligibility.

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, 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.

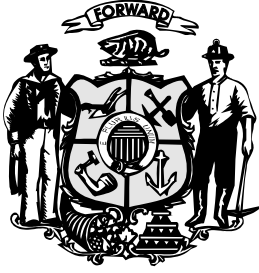
APPEAL TO COURT

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, 201 E. Washington Ave., **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 10th day of November, 2025

\s _____
Brian C. Schneider
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 November 10, 2025.

Dodge County Human Services
Division of Health Care Access and Accountability
Attorney Douglas Plier