



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: MDV - 220070

PRELIMINARY RECITALS

Pursuant to a petition filed on September 19, 2025, 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 November 5, 2025, by telephone.

The issue for determination is whether the agency erred in its determination the petitioner is liable for a \$4,740 divestment for the period from June 2025 through October 2025.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: V. Cornelius
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 is a veteran's surviving spouse.
3. Petitioner lives at [REDACTED] which is a community-based residential facility.
4. Petitioner is eligible to receive a VA survivor pension of \$1,515 per month. Of that amount, \$567 is considered Aid and Attendance.
5. As of June 1, 2025 the petitioner renounced the pension and has declined to receive it.
6. The agency determined \$948 per month of the declined pension to be a divestment.
7. The agency issued a divestment notice on 9/9/25 informing petitioner that there would be a divestment penalty of \$4,740 for the period of June through October 2025.
8. Petitioner appealed from the notice.

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).

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.

The divestment rules include a provision cited by the agency:

17.2.7.4 Avoiding Receipt

The action of avoiding the receipt of income or assets a member is entitled to is an unallowable divestment and results in a penalty period.

This type of divestment includes:

- *Irrevocably waiving pension income.*
- *Disclaiming an inheritance.*
- *Not accepting or accessing injury settlements.*
- *Diverting tort settlements into a trust or similar device.*
- *Refusing to take legal action to obtain a court-ordered payment that is due to the institutionalized person, such as child support or alimony.*

It is not divestment if the applicant or member fails to apply for cash benefits that they may be eligible for, such as Social Security or veterans' benefits.

Medicaid Eligibility Handbook at Section 17.2.7.4 (boldface added for emphasis).

In this case, the facts are not in dispute. The agency representative at hearing explained that the agency’s current position is that Petitioner is currently divesting \$948 each month because she has renounced a veteran’s benefit (survivor’s pension of \$1,515 per month) to which she is entitled. Of this amount, \$567 may be disregarded as a category of benefit called “aid and attendance” which is not considered for MA purposes. See *Medicaid Eligibility Handbook* at Section 15.3.26.1. This renouncement was effective 6/1/25. The renouncement is revocable. The agency determined that because the renouncement was for \$948 for each month since June 2025 it issued the divestment penalty notice for a total of \$4,740 through the end of October 2025. This, under the agency’s position, results in a divestment penalty as of the end of October of 13 days.

Petitioner was represented at hearing by [REDACTED]. [REDACTED] presentation was vague, and lacked clarity. Petitioner’s representative cited a provision from the *Medicaid Eligibility Handbook* at Section 15.3.26.1 which states:

When a single veteran or a surviving spouse without dependents is in a nursing home and enrolled in Medicaid, the VA is required to reduce the pension amount to no more than \$90, except when the member is in a State Veterans Home. These reduced pensions of \$90 or less are always considered A&A, so the full amount of these reduced pensions is disregarded for Medicaid eligibility as well as cost share or patient liability determinations.

Petitioner suggests that this supports her position that there should be no determination of a divestment by the renunciation of the pension.

The agency explained that it has received no verification that the full pension amount is not available or that the surviving spouse is in a nursing home in the first place. As far as the agency knows, petitioner is residing in a Community-Based Residential Facility ("CBRF") which is not a nursing home. Petitioner did not seem to dispute this or provide information that [REDACTED], petitioner's residence, is a nursing home and not a CBRF.

Based on the evidence in this case, I am persuaded that the divestment determination was correct. Petitioner offered no persuasive evidence or argument to the contrary.

CONCLUSIONS OF LAW

The agency correctly determined that the renunciation of the survivor's pension resulted in a monthly divestment from June 2025 through October 2025 in a total amount of \$4,740.

THEREFORE, it is

ORDERED

That this appeal 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.

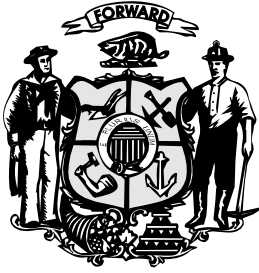
APPEAL TO COURT

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, 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 December, 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 December 10, 2025.

Brown County Human Services
Division of Health Care Access and Accountability