

CR 86-77

CERTIFICATE

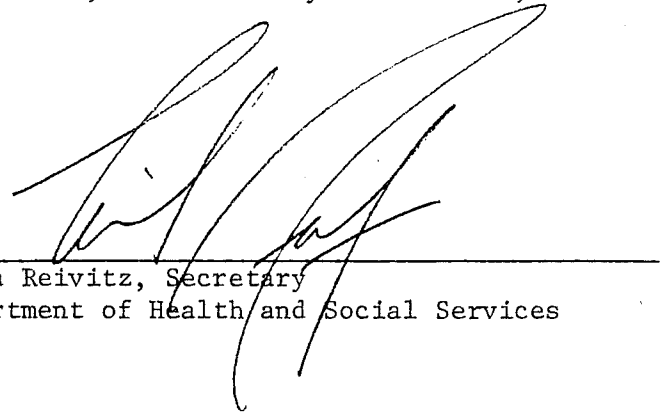
STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Linda Reivitz, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to divestment of property in order to create eligibility for aid to families with dependent children (AFDC) were duly approved and adopted by this Department on December 10, 1986.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 10th day of December, 1986.

RECEIVED
DEC 10 1986
3:40 pm
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Linda Reivitz, Secretary
Department of Health and Social Services

SEAL:

2-1-87

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
ADOPTING RULES

To create HSS 201.275, relating to divestment of property in order to create eligibility for aid to families with dependent children (AFDC).

Analysis Prepared by the Department of Health and Social Services

Section 49.19(2)(p), Stats., provides that any person who has disposed of property without receiving adequate payment in the two year period before applying for Aid to Families with Dependent Children (AFDC) is presumed to have disposed of the property in order to qualify for benefits. Under that statute the person is ineligible for AFDC until the divested amount has been expended for maintenance needs and medical care. The Department is directed to promulgate rules to administer this provision.

The Department's former rules on AFDC divestment, s.PW-PA 20.08, were inadvertently repealed at the time that the Department updated and renumbered its AFDC rules to create ch. HSS 201. This proposed order repromulgates s.PW-PA 20.08 as s.HSS 201.275, updates the rules to bring them into compliance with current drafting standards and existing statutes and rules and specifies applicability of the rules to AFDC recipients as well as applicants. HSS 201.275 specifies a procedure for agency determination of the amount of divestment, states ways in which divestment is a barrier to eligibility for AFDC, and indicates how divestment is removed as a barrier to AFDC eligibility.

Pursuant to authority vested in the Department of Health and Social Services by ss. 49.19(2)(p) and 49.50(2), Stats., the Department of Health and Social Services hereby creates rules interpreting s. 49.19(2)(p), Stats., as follows:

SECTION 1. HSS 201.275 is created to read:

HSS 201.275 DIVESTMENT. (1) PURPOSE. This section implements s. 49.19(2)(p), Stats., which makes an applicant for or recipient of AFDC ineligible for benefits when the applicant or recipient has disposed of property without receiving adequate and full consideration for it within 2 years before the date of application for AFDC.

(2) APPLICABILITY. This section applies to any person who is an applicant for or recipient of AFDC and to all persons for whom that person has legal responsibility and for whom aid is being sought.

(3) DEFINITIONS. In this section:

(a) "Adequate and full consideration" means 100 percent of net market value.

(b) "Compensation received" means the dollar value that can be attached to what is received in return for property. The "compensation received" may be in the form of:

1. Cash;
2. Other assets such as accounts receivable and promissory notes, both of which must be valid and collectible to be of value, and stocks, bonds, and both land contracts and life estates;
3. Other property;
4. Discharge of a debt;
5. Prepayment of a bonafide and irrevocable contract; or
6. Services assigned a valuation equal to the cost of purchase on the open market.

(c) "Conveyance, transfer, or disposition" means the act of changing legal title or other right of ownership to exempt or nonexempt, real or personal property.

(d) "Divestment" means the conveyance, transfer, or disposition of any property, except exempt assets as specified in s. HSS 201.27, for a compensation received which is less than adequate and full consideration.

(e) "Exempt assets" means assets listed under s. HSS 201.27(2) which a person or group may retain and still be eligible for AFDC.

(f) "Net market value" means the market value on the date of transaction minus the actual costs of the transaction not to exceed costs for comparable transactions on the open market.

(g) "Property" means anything to which a person has legal title or other right of ownership and includes exempt or nonexempt, real or personal property.

(4) DETERMINING DIVESTMENT. (a) Amount of divestment. For a person who, within 2 years before making application for AFDC, has disposed of property without receiving adequate and full consideration for it, the agency shall determine the amount of the divestment in the following manner:

1. Determine the net market value of all properties the person has disposed of within 2 years before making application for AFDC, except a homestead or other exempt asset, as of the date of the transaction;

2. Determine the compensation received for the properties identified under subd. 1. In determining compensation received, the presumption that services and accommodations rendered to each other by members of a family or other relatives were gratuitous may be rebutted only by direct and positive evidence of a prior express contract for payment;

3. If the compensation received is equal to or greater than adequate and full consideration, there is no divestment;

4. If the compensation received is less than adequate and full consideration, the difference is the divested amount and shall be considered an asset;

5. If the divested amount plus the AFDC group's other assets are equal to or less than \$1,000, the divestment may not be considered a bar to eligibility; and

6. If the divested amount plus the AFDC group's other assets are greater than \$1,000, the excess over \$1,000 is the amount of the divestment to be expended for maintenance needs and medical care under par. (c).

(b) Divestment as a barrier to eligibility. 1. Divestment by any person within 2 years prior to the date of application for AFDC shall, unless shown to the contrary, be presumed to have been made in contemplation of receiving AFDC.

2. When property is owned by 2 or more persons, the expected share of the compensation received shall be the same as the share of ownership. All owners shall be assumed to share equally in the absence of evidence to the contrary.

3. Divestment does not occur when property is divided as part of a divorce or separation action or when property is lost due to foreclosure or repossessed due to failure to meet payments.

4. To rebut the presumption that divestment was made in contemplation of receiving aid, the applicant or recipient shall establish by a preponderance of the evidence that the transaction was exclusively for some other purpose. In this subdivision, "preponderance of the evidence" means evidence which leads the hearing examiner to believe that the existence of a fact is more probable than its nonexistence.

Note: For example, an applicant or recipient may rebut the presumption that the divestment was made in contemplation of receiving aid by showing by a preponderance of the evidence that, at the time of divesting, the applicant or recipient had provided for future maintenance needs and medical care.

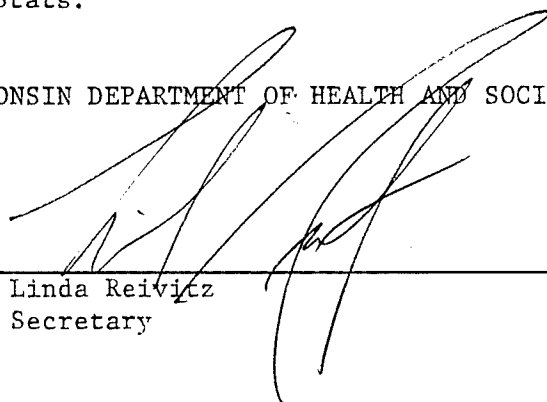
(c) Removing divestment as a barrier to eligibility. 1. To remove the divestment as a barrier to eligibility for AFDC, the amount of the divestment under par. (a)6. to be satisfied shall be expended for maintenance needs and medical care, or 2 years shall have elapsed since the act of divestment, whichever occurs first.

2. Amounts to be expended for maintenance needs and medical care shall be calculated monthly. The monthly calculation from the date of divestment shall be the AFDC standard for the appropriate family size as provided in s. 49.19(11)(a)1., Stats., plus actual medical care expenses incurred for that month.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

WISCONSIN DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Date: December 10, 1986 By:



Linda Reivitz
Secretary

Seal:



State of Wisconsin \ DEPARTMENT OF HEALTH AND SOCIAL SERVICES
1 West Wilson Street, Madison, Wisconsin 53702

Anthony S. Earl
Governor

Linda Reivitz
Secretary

December 10, 1986

Mailing Address:
Post Office Box 7850
Madison, WI 53707

Mr. Orlan Prestegard
Revisor of Statutes
9th Floor - 30 on the Square
Madison, Wisconsin 53702

Dear Mr. Prestegard:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 201.275, administrative rules relating to divestment of property in order to create eligibility for aid to families with dependent children (AFDC).

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

These rules affect applicants for AFDC, recipients of AFDC, and county agencies which administer the AFDC program. The rules do not affect small businesses as defined in s. 227.114(1)(a), Stats.

Sincerely,

Linda Reivitz
SECRETARY

Enclosure

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DEC 10 1986

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