

CR 89-152

CERTIFICATE

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

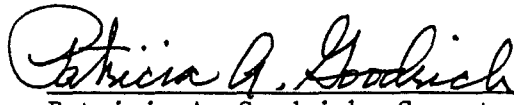
MAR 16 1990
1:25 am
Revisor of Statutes
Bureau

I, Patricia A. Goodrich, 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 disposal of resources at less than fair market value in order to become eligible for Medical Assistance were duly approved and adopted by this Department on March 16, 1990.

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 16th day of March, 1990.

SEAL:



Patricia A. Goodrich, Secretary
Department of Health and Social Services

5-1-90

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
RENUMBERING, AMENDING AND CREATING RULES

To renumber HSS 103.02 (title), (1), (2) and (3); to amend HSS 103.063 (title) and (1m), as renumbered; and to create HSS 103.063(1) and 103.065, relating to divestment for the purpose of becoming eligible for Medical Assistance.

Analysis Prepared by the Department of Health and Social Services

To be eligible for Medical Assistance (MA) an applicant or recipient may not have more resources than are permitted under s.49.46(1)(e) or 49.47(4)(b), Stats. In practice an applicant or recipient often attempts to meet asset eligibility limits by selling or giving away resources for less than fair market value. This is called divestment. There are restrictions on divestment.

The proposed rules implement s.49.45(17), Stats., as repealed and recreated by 1989 Wisconsin Act 31, by amending the current rules on divestment to limit the applicability of these rules to MA applicants or recipients who divested before August 9, 1989, except that interspousal transfers before October 1, 1989, are subject to these rules, and by creating new rules on divestment to apply only to institutionalized MA applicants or recipients who divest on or after August 9, 1989, which is the effective date of the new s.49.45(17), Stats., except that as provided in s.3202(23) of 1989 Wisconsin Act 31 the treatment of s.49.45(17), Stats., first applies to interspousal transfers occurring on or after October 1, 1989. The proposed rules also renumber the current rules on divestment in order to move them to a more appropriate location in ch. HSS 103.

The changes in s.49.45(17), Stats., made by 1989 Wisconsin Act 31 and the proposed rule changes will bring Wisconsin policy on disposal of resources at less than fair market value in order to qualify for Medical Assistance into conformity with s.1917(c) of the Social Security Act as amended by the Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360) and the Family Support Act of 1988 (P.L. 100-485). Section 1917(c) provides that the divestment restriction applies only to institutionalized applicants for and recipients of MA, and defines an institutionalized individual as one who is an inpatient in a skilled nursing facility (SNF) or intermediate care facility (ICF), an inpatient in a medical institution with payment made based on a level of care provided in an SNF or ICF, or an individual receiving home and community-based care financed by MA under an MA waiver. An institutionalized individual who has divested will be ineligible under Medical Assistance for payment for those services but continues to be eligible for such MA card services as physician visits.

The Department's authority to renumber, amend and create these rules is found in s.49.45(10), Stats., and in s.49.45(17)(d), Stats., as repealed and recreated by 1989 Wisconsin Act 31. The rules interpret s.49.45(17), Stats., as repealed and recreated by 1989 Wisconsin Act 31.

SECTION 1. HSS 103.02 (title) (1), (2) and (3) are renumbered 103.063 (title), (1m), (2) and (3), and HSS 103.063 (title), as renumbered, is amended to read:

HSS 103.063 (title) DIVESTMENT PRIOR TO AUGUST 9, 1989

SECTION 2. HSS 103.063 (1) is created to read:

HSS 103.063 (1) APPLICABILITY. This section applies to all applicants for MA and recipients of MA who disposed of a resource at less than fair market value prior to August 9, 1989 and to all inter-spousal transfers occurring before October 1, 1989. Section HSS 103.065 applies to all institutionalized applicants and recipients who divest on or after August 9, 1989, except for inter-spousal transfers occurring before October 1, 1989.

SECTION 3. HSS 103.063(1m), as renumbered, is amended to read:

HSS 103.063(1m) PURPOSE. This section implements s.49.45(17), 1987-88 Stats., which makes an applicant for or recipient of MA ineligible when the applicant or recipient ~~disposes~~ disposed of a resource at less than fair market value within 2 years before or at any time after his or her most recent application for MA or any review of eligibility for MA. Section 49.45(17)(d), 1987-88 Stats., is specifically concerned with an applicant for or recipient of MA who resides as an inpatient in a skilled nursing facility (SNF), intermediate care facility (ICF) or inpatient psychiatric facility and who ~~has~~ disposed of homestead property at any time during or after the 2 year period prior to the date of the most recent application or any review of eligibility.

SECTION 4. HSS 103.065 is created to read:

HSS 103.065 DIVESTMENT ON OR AFTER AUGUST 9, 1989. (1) APPLICABILITY. This section applies to all institutionalized applicants for and recipients of MA who dispose of resources at less than fair market value on or after August 9, 1989, except for inter-spousal transfers occurring before October 1, 1989. Section HSS 103.063 applies to all applicants and recipients who divested before August 9, 1989 and to inter-spousal transfers occurring before October 1, 1989.

(2) PURPOSE. This section implements s.49.45(17), Stats., which provides for a period of restricted MA coverage when an individual who is institutionalized or becomes institutionalized disposes of a resource at less than fair market value.

(3) DEFINITIONS. In this section:

(a) "Community spouse" means a person who is married to an institutionalized individual but is not himself or herself an institutionalized individual.

(b) "Institutionalized individual" means an applicant or recipient who is an inpatient in an SNF or ICF, an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in an SNF or ICF, or receiving home and community-based care MA services under ss.49.46 and 49.47, Stats.

(c) "Medical assistance" or "MA" means payment for services provided to a resident of an SNF or ICF under s. HSS 107.09(2) and (4)(a), payment to a medical institution as defined under 42 CFR 435.1009 for care based on a level of care provided in an SNF or ICF, or payment for services provided under a home and community-based care waiver program authorized under 42 USC 1396n(c).

(d) "Medical assistance card services" means the services covered under ch. HSS 107, except for services reimbursed as institutional care, as defined by s. HSS 107.09(2) and (4)(a), services received in an SNF or ICF or a medical institution and services reimbursed under a home and community-based care waiver program authorized under 42 USC 1396n(c).

(e) "Resource" has the meaning given in 42 USC 1382b, except that the home, as defined in s. HSS 101.03(75), is a nonexempt resource.

(4) DIVESTMENT. (a) Divestment resulting in ineligibility. An institutionalized individual or someone acting on behalf of that individual who disposes of a resource at less than fair market value within 30 months immediately before or at any time after the individual becomes institutionalized if the individual is receiving MA on the date he or she becomes institutionalized or, if the individual is not a recipient on that date, 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. A divestment results in ineligibility for MA unless made to an exempt party under par. (b) or (c) or when one of the circumstances in par. (d) exist. In this paragraph, "receiving" means entitled to receive as well as actually receiving, in the same way that "recipient" as defined in s. HSS 101.03(150) means a person who is entitled to receive benefits under MA as defined under s. HSS 101.03(95).

(b) Permitted divestment to an exempt party -- homestead property. Transfer of homestead property at less than fair market value is not divestment resulting in ineligibility under this section if the individual transferred title to the homestead property to:

1. The spouse of the institutionalized individual on or after October 1, 1989;

2. A child of the institutionalized individual who is under age 21 or who meets the SSI definition of total and permanent disability or blindness under 42 USC 1382c;

3. A sibling of the institutionalized individual who has an equity interest in the homestead and who was residing in the institutionalized individual's home for at least one year immediately before the date the individual became an institutionalized individual. In this subdivision, "equity interest" means ownership interest in a homestead by one or more persons who pay or have paid all or a portion of mortgage or land contract payments, expenses for upkeep and repair or payment of real estate taxes. The institutionalized individual shall provide documentation to verify the sibling's equity interest in the homestead; or

4. The child, other than a child described in subd. 2, of the institutionalized individual who was residing in the institutionalized individual's home for a period of at least 2 years immediately before the date the individual became an institutionalized individual and who provided care to the institutionalized individual which permitted him or her to reside at home rather than in an SNF, ICF or medical institution which receives payment based on a level of care provided in an SNF or ICF. The institutionalized individual shall provide a notarized statement to the agency from his or her physician or another person or persons who have personal knowledge of the living circumstances of the institutionalized individual stating that the individual was able to remain in his or her home because of the care provided by the child. A notarized statement only from the child does not satisfy the requirements of this subdivision.

(c) Permitted divestment to an exempt party -- non-homestead property. Transfer of a non-homestead resource at less than fair market value is not divestment resulting in ineligibility under this section if the individual transferred the resource to one of the following individuals:

1. Beginning October 1, 1989, to the community spouse or to another individual for the sole benefit of the community spouse after the individual became an institutionalized individual;

2. To a minor or adult child of the institutionalized individual who meets the SSI definition of total and permanent disability or blindness under 42 USC 1382c; or

3. Beginning October 1, 1989, to the individual's spouse or to another person for the sole benefit of the individual's spouse before the individual became an institutionalized individual. Such a transfer is not considered divestment resulting in ineligibility for as long as the individual's spouse does not transfer the resource to another person other than his or her spouse at less than fair market value. The individual's spouse shall report any transfer of the resource to the agency within 10 days after the transfer is made as required under s.49.12(9), Stats. Failure of the institutionalized individual's spouse to report the transfer may be fraud under s.49.49(1)(a)3, Stats.

(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. HSS 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.

(5) DETERMINING THE PERIOD OF INELIGIBILITY. An institutionalized individual who has made a prohibited divestment under this section as determined by the agency without a condition under sub. (5) existing shall be ineligible for MA as defined in this section for, beginning with the month of divestment, the lesser of:

(a) Thirty months; or

(b) The number of months obtained by dividing the total uncompensated value of the transferred resources by the statewide average monthly cost to a private pay patient in an SNF at the time of application. In this paragraph, "total uncompensated value of the transferred resource" means the difference between the compensation received for the resource and the fair market value of the resource less any outstanding loans, mortgages or other encumbrances on the resource.


(6) AGENCY RESPONSIBILITIES. (a) The agency shall determine if an applicant or recipient who is ineligible for MA under this section is eligible for MA card services. The applicant or recipient's income eligibility shall be determined using the standards under s.HSS 103.04(4).

(b) The agency shall monitor retention of assets by the non-institutionalized spouse under sub. (4)(c)3 at each application or review of eligibility for the institutionalized spouse.

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

Dated: March 16, 1990

By: 
Patricia A. Goodrich
Secretary

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State of Wisconsin \

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

Tommy G. Thompson
Governor

Patricia A. Goodrich
Secretary

Mailing Address:
Post Office Box 7850
Madison, WI 53707

March 16, 1990

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MAR 16 1990

Revisor of Statutes
Bureau

Mr. Bruce E. Munson
Revisor of Statutes
7th Floor - 30 on the Square
Madison, WI 53702

Dear Mr. Munson:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 103.02, 103.063 and 103.065, administrative rules relating to disposal of resources at less than fair market value in order to become eligible for Medical Assistance.

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

These rules concern county administration of a federal-state public assistance program. They do not directly affect small businesses as defined in s. 227.114(1)(a), Stats.

Sincerely,

Patricia A. Goodrich
Secretary

Enclosure