

CR 90-159

CERTIFICATE

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

I, Gerald Whitburn, 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 for the purpose of becoming eligible for Medical Assistance were duly approved and adopted by this Department on April 10, 1991.

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 April, 1991.



SEAL:

\_\_\_\_\_  
Gerald Whitburn, Secretary  
Department of Health and Social Services

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6-1-91

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

APR 10 1991

Revisor of Statutes  
Bureau

To amend HSS 103.065(1), (2), (4)(a) and (c), (5)(intro.) and (6)(b) and to create HSS 103.065(4)(cm), 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.

This order implements the amendments made to s.49.45(17)(b)1 and 2, Stats., by 1989 Wisconsin Act 336, by modifying the current rules on divestment that went into effect on May 1, 1990, to include within the meaning of divestment the transfer of a resource by a spouse without the spouse receiving fair market value for it in addition to a transfer made by the MA applicant or recipient. Transfer by a spouse may occur either before or after the individual becomes an institutionalized individual and requests that MA pay for the costs of the nursing home services or services under a home and community based care waiver program such as the Community Integration Program, otherwise known as CIP II. These provisions affecting transfers by spouses apply to transfers of resources for less than fair market value that occur on or after July 1, 1990. Transfers that occur prior to July 1, 1990, will be considered under the statute and rule provisions that were in effect when the transfer occurred.

The changes in s.49.45(17)(b)1 and 2, Stats., made by 1989 Wisconsin Act 336 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 s.6411(e) of the Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239). Section 1917(c) as amended by P.L. 101-239 provides that an institutionalized individual may be ineligible for a period of time for payment by the MA program for institutional care if he or she or his or her spouse disposes of resources for less than fair market value.

The Department's authority to amend and create these rules is found in s.49.45(10), Stats., and s.49.45(17)(d), Stats., as repealed and recreated by 1989 Wisconsin Act 31. The rules interpret s.49.45(17)(b)1 and 2, Stats., as affected by 1989 Wisconsin Acts 31 and 336.

SECTION 1. HSS 103.065(1), (2) and (4)(a) and (c)(intro.) are amended to read:

HSS 103.065(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, and to all institutionalized applicants for and recipients of MA whose spouse disposes of resources at less than fair market value on or after July 1, 1990. 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, or the individual's spouse, disposes of a resource at less than fair market value.

(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 for the institutionalized individual unless made to an exempt party under par. (b) or (c) or when one of the circumstances in par. (d) exists. An institutionalized individual may also be determined ineligible for MA if his or her spouse disposes of a resource at less than fair market value on or after July 1, 1990. 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).

Note: The department advises that when the transfer for less than fair market value has been made by the spouse of the institutionalized applicant or recipient, the determination of whether or not the transfer will be treated as a divestment will be made pursuant to both the divestment provisions under s.49.45(17), Stats., and the spousal impoverishment provisions under s.49.455(5)(d), Stats.

(c)(intro.) Permitted divestment on or after August 9, 1989, but before July 1, 1990, to an exempt party -- non-homestead property. For transfers that occurred on or after August 9,

1989, but before July 1, 1990, Transfer 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:

SECTION 2. HSS 103.065(4)(cm) is created to read:

HSS 103.065(4)(cm) Permitted divestment on or after July 1, 1990, to an exempt party -- non-homestead property. Transfer of a non-homestead resource at less than fair market value on or after July 1, 1990, is not divestment resulting in ineligibility under this section to the extent that the resource was transferred:

1. To or from the individual's spouse or to another individual for the sole benefit of the spouse; or

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.

SECTION 3. HSS 103.065(5)(intro.) and (6)(b) are amended to read:

HSS 103.065(5) DETERMINING THE PERIOD OF INELIGIBILITY. An institutionalized individual who has made a divestment under this section resulting in ineligibility or whose spouse has made a divestment under this section resulting in ineligibility on or after July 1, 1990, as determined by the agency, without a condition under sub. (4)(d) existing, shall be ineligible for MA as defined in this section for, beginning with the month of divestment, the lesser of:

(6)(b) The agency shall monitor retention of assets by the non-institutionalized spouse for those transfers that occur on or after October 1, 1989, but before July 1, 1990, 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: April 10, 1991

By: \_\_\_\_\_

Gerald Whitburn  
Secretary

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Tommy G. Thompson  
Governor  
Gerald Whitburn  
Secretary



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## State of Wisconsin Department of Health and Social Services

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April 10, 1991

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Revisor of Statutes  
Bureau

Mr. Bruce E. Munson  
Revisor of Statutes  
119 Martin Luther King, Jr., Blvd.  
Madison, WI 53703

Dear Mr. Munson:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 103.065, administrative rules relating to divestment for the purpose of becoming eligible for Medical Assistance.

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Gerald Whitburn".

Gerald Whitburn  
Secretary

Enclosure