



Divestment

Part 8



DHS/DHCAA/BEPS Training

April 2010



Introduction

Divestment can affect the eligibility for Long Term Care Medicaid. If it is determined that divestment occurred some time in the past, the applicant or recipient may be found ineligible for Long Term Care Medicaid for a period of time. Divestment does not affect eligibility for Medicaid card services.

DHS/DHCAA/BEPS Training

April 2010

Terms and Definitions

Divestment" is the transfer of income, non-exempt assets, and homestead property, belonging to an institutionalized person or his/her spouse or both for less than the fair market value of the income or asset.



Terms and Definitions

The transfer can be made by:

- An institutionalized person, or
- His/her spouse, or
- A person, including a court or an administrative body, with legal authority to act in place of or on behalf of the institutionalized person or the person's spouse, or
- A person, including a court or an administrative body, acting at the direction or upon the request of the institutionalized person or the person's spouse. This includes relatives, friends, volunteers, and authorized representatives.

Terms and Definitions

Making an asset unavailable without receiving Fair Market Value is divestment.

It is also divestment if a person takes an action to avoid receiving income or assets s/he is entitled to.

Terms and Definitions

Actions which would cause income or assets not to be received include:

- Irrevocably waiving pension income.
- Disclaiming an inheritance.
- Not accepting or accessing injury settlements.
- Diverting tort settlements into a trust or similar device.

Terms and Definitions

Actions which would cause income or assets not to be received include (*con't.*):

- Refusing to take legal action to obtain a court-ordered payment that is not being paid, such as child support or alimony.
- Refusing to take action to claim the statutorily required portion of a deceased spouse's or parent's estate. Count the action as a divestment only if:
 - The value of the abandoned portion is clearly identified.
 - There is certainty that a legal claim action will be successful.

Terms and Definitions

This includes situations in which the will of the institutionalized person's spouse precludes any inheritance for the institutionalized person. Under Wisconsin law, a person is entitled to a portion of his/her spouse's estate. If the institutionalized person does not contest his/her spouse's will in this instance, the inaction may be divestment.

Terms and Definitions

Transfer:

the act of changing the legal title or other right of ownership to another person.

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.

Net market value:

The FMV minus any outstanding loans or encumbrances on the property.

Terms and Definitions

Value received:

amount of money or value of property or services received in return for the property

Divested amount:

the net market value minus the value received.

Look Back Period

The look back period is a period of time prior to application or entry into an institution. A divestment that has occurred in the look back period or any time thereafter can cause the applicant or recipient to be ineligible.

Look Back Period

Divestments prior to January 1, 2009: look back period is 36 months for non-trusts, 60 month for trusts.



Divestments on or after January 1, 2009: the look back period is 60 months for all divestments but only back to January 1, 2009.

Penalty Period

- If there was a divestment during the look back period or any time after, the institutionalized person must be determined ineligible for a period of time.
- During this penalty period Medicaid will not pay the institutionalized person's daily care rate in the nursing home. S/he may, however, still be eligible for Medicaid card services.
- A Community Waivers or FC applicant or recipient is ineligible for Community Waivers or FC. S/he may still be eligible for SSI Related Medicaid or MAPP.

Calculating the Penalty Period

For divestments prior to January 1, 2009, divide the divested amount by the average nursing home cost to a private pay patient. (currently \$6259.00) Round down any fractions of a month.

Calculating the Penalty Period

Example: Jeff transfers \$83,512 in cash, CDs, and stocks to his son. \$83,512 divided by \$6,259 is 13.34. Jeff is ineligible for 13 months beginning with the month he transferred the assets.

Calculating the Penalty Period

For divestments on or after January 1, 2009, the divestment penalties are calculated in days, using the average daily nursing home cost to a private pay patient. The average daily rate is computed by multiplying the average monthly rate by 12 and dividing by 365 ($\$6,259 \times 12 = 75,108$ divided by 365 = \$205.77).

Calculating the Penalty Period

Example: Bob divested \$4,500 on January 4, 2009. He was admitted to a nursing home, applied for Institutional Medicaid on January 10, 2009 and was determined to be otherwise eligible. Bob's penalty period is calculated at 21 days ($\$4500 \div \$205.77 = 21.86$).

Penalty Period Begin Date

For divestments that occurred prior to January 1, 2009, the penalty period begins with the month of divestment.

Penalty Period Begin Date

Example: Jeff transferred \$83,512 in cash, CDs, and stocks to his son on March 15, 2009. $\$83,512 \div \$6,259 = 13.34$ Jeff is ineligible for 13 months beginning with March 2009.

Penalty Period Begin Date

For divestments that occurred on or after January 1, 2009:

The penalty period for an institutionalized applicant begins on the day the applicant:

- Is institutionalized
- Has applied for Medicaid and
- Is otherwise eligible for Medicaid

Penalty Period Begin Date

For divestments that occurred on or after January 1, 2009:

The penalty period for HCBW/FC applicants begins:

- on the date that they apply for a HCBW program,
- meet the appropriate level of care & functional screen criteria,
- meet all other Medicaid non-financial and financial eligibility requirements, regardless of whether or not waiver funding is actually available.

Penalty Period Begin Date

Medicaid Recipients: The penalty period begin date for divestments that occur on or after January 1, 2009 is the first day of the month in which the divestment occurred.





Penalty Period Begin Date

Before the actual penalty can be imposed, the IM agency must provide adequate and timely notice to the recipient, advising him/her of the negative action.

Whether benefits are recoverable during the time between the penalty period start date and the date long term care benefits were terminated depends on whether the divestment was reported timely.



Recalculation of Penalty Periods

Divestment related penalty periods that have been established for individuals receiving or requesting Medicaid LTC services must be adjusted when the divested resource or its equivalent fair market value is returned to the individual.

Full Refund

When the entire divested resource or equivalent value is returned to the individual, the entire penalty period is nullified.

The individual's Medicaid eligibility for LTC services must be re-determined retroactively, back to the beginning date of the previously imposed penalty period.

Full Refund

The individual can then be certified for Medicaid LTC services if s/he met all other eligibility requirements during this retroactive adjustment period.

The refunded resources will be counted as available assets beginning with the month in which they were returned.



Partial Refund

Individuals who are currently serving a divestment penalty may receive a partial refund of a previously transferred resource.



Partial Refund

When part of a resource or its equivalent value is returned through a cash payment, the divested amount and the penalty period is recalculated only if the returned resource is used to pay for medical and remedial expenses incurred during the divestment penalty period or for the cost of care previously provided to the individual during the divestment penalty period.

Partial Refund

In situations where the partial refund is made with a non-cash item such as land, stocks, bonds, etc, the refund will result in a reduced penalty period even though no payment is made for previously incurred medical, remedial, or care expenses.

Special Circumstances

There are specific rules for determining divestment for certain types of assets. Refer questions on these types of assets to the Income Maintenance agency.

- Annuities
- Trusts
- Life Estates
- Promissory Notes
- Divestments by Paying Relatives



Intent

A transfer of income or assets is not a divestment if the individual can demonstrate that the transfer wasn't made with the intent of becoming eligible for Medicaid.

The individual 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.

Examples of transferring assets without Intent

The applicant/member had made arrangements to provide for his/her long term care needs by having sufficient financial resources and/or long term care insurance to pay for long term care services for at least a five-year period at the time of the transfer.

Examples of transferring assets without Intent

Taking into consideration the individual's health and age at the time of the transfer, there was no expectation of long-term care services being needed for the next five years.

Examples of transferring assets without Intent

If an individual had a pattern of charitable gifting, or gifting to family members (i.e. birthdays, graduations, weddings, etc.) prior to the look-back period, similar transfers during the look-back period would not be considered to have been given with the intent to divest as long as the total yearly gifts did not exceed 15% of the individual's or couple's annual gross income.

Examples of transferring assets without Intent

Resources spent on the current support of dependent relatives living with the individual are not considered to be divestments. The individual must either claim the relative as a dependent for IRS tax purposes, or otherwise provide more than 50% of the cost of care and support for the dependent relative.

Undue Hardship

A divestment penalty period must be waived when the imposition of the penalty period deprives the individual of:

- Medical care such that the individual's health or life would be endangered; or
- Food, clothing, shelter, or other necessities of life.

Undue Hardship Process

- Negative Notice of Decision is generated
- Divestment Penalty and Undue Hardship Notice is sent along with Under Hardship Waiver Request Form
- Completed Undue Hardship Waiver Request submitted to the IM Agency
- Decision to grant or not to grant the Waiver made by the IM Agency within 30 days.
- Appropriate Positive or Negative Notice sent to applicant.

To Exit

Congratulations, you have completed:

The Divestment Training

Click the "X" on the navigation bar to exit properly.

