

CERTIFICATE

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

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

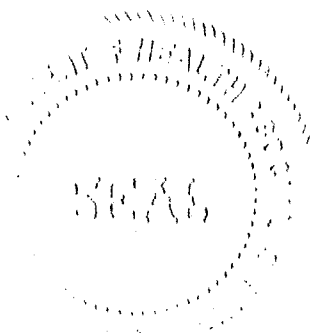
I, Donald E. Percy, Secretary of the Department of Health and Social Services and custodian of the official records of said department do hereby certify that the annexed rules relating to disposal of property at less than fair market value (divestment) in order to qualify for medical assistance were duly approved and adopted by this department on May 15, 1981.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such 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 15th day of May, A.D. 1981.

Donald E. Percy, Secretary
Department of Health and Social Services

SEAL:



ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
ADOPTING RULES

Relating to rules concerning disposal of property at less than fair market value in order to qualify for medical assistance

Analysis

Analysis prepared by the Department of Health and Social Services

Chapter 29, Laws of 1977, created ss. 49.46(1)(f) and 49.47(4)(d), Stats., prohibiting the divestment of property in contemplation of the receipt of medical assistance and ordering the department to promulgate rules for the administration of this prohibition. This statute was amended by Chapter 418, Laws of 1977, limiting it to the extent permitted by federal law. Based on Public Law 96-611 enacted December 28, 1980, federal law permits the prohibition of the divestment of property by applicants for medical assistance.

HSS 103.12 Divestment responds to the statutory order, and prohibits divestment with the intent to create eligibility for applicants for the medical assistance program. Definitions of terms used in the statute, criteria and methods of determining divestment and a procedure for cancelling the amount divested are contained in this rule.

Pursuant to the authority vested in the Department of Health and Social Services by ss. 49.45(10) and 49.46(1)(f), Stats., the Department hereby adopts rules interpreting ss. 49.46(1)(f) and 49.47(4)(d) Stats. Section HSS 103.12 of the Wisconsin Administrative Code is adopted to read as follows:

HSS 103.12 Divestment.

- (1) PURPOSE. This section is adopted to provide for the administration of ss. 49.46(1)(f) and 49.47(4)(d), Stats., regarding eligibility of applicants for medical assistance when divestment of property has occurred within 2 years prior to the date of application.
- (2) PERSONS AFFECTED. These rules apply to all applicants for medical assistance who apply after the effective date of this rule and to all persons for whom applicants are legally responsible and for whom benefits are sought.

(3) DEFINITIONS.

- (a) "Conveyance, transfer or disposition" means the act of changing legal title or other right of ownership to another person or other persons.
- (b) "Divestment" means the conveyance, transfer or disposition of any property for a value received which is less than the net market value.
- (c) "Net market value" means the market value of the property on the date of the transaction minus the costs of the transaction on the open market.
- (d) "Property" means anything to which a person has legal title or other right of ownership.
- (e) "Value received," means the dollar value which can be attached to what is received in return for the property and, without limitation by enumeration, may be in one of the following forms:
 - 1. Cash.
 - 2. Other assets such as accounts receivable and promissory notes (both of which must be valid and collectible to be of value), stocks, bonds, and both land contracts and life estates which are evaluated over an extended time period.
 - 3. Discharge of a debt.
 - 4. Prepayment of a bona fide and irrevocable contract such as a mortgage, shelter lease, or loan, or prepayment of taxes.
 - 5. Services which shall be assigned a valuation equal to the cost of purchase on the open market. The presumption that services and accommodations rendered to each other by the members of a family or other relatives were gratuitous can be rebutted only by direct and positive evidence of a prior express contract for payment.

(4) DETERMINING DIVESTMENT.

- (a) If the value received is equal to or greater than net market value, there is no divestment.
- (b) If the value received is less than net market value, the difference is the divested amount and shall be considered an asset.

- (c) If the divested amount plus other countable assets are equal to or less than the appropriate asset limit, the divestment shall not be considered a bar to eligibility.
 - (d) If the divested amount plus the other countable assets is greater than the appropriate asset limit, the excess over this limit is the amount of the divestment to be satisfied.
- (5) DIVESTMENT AS A BARRIER TO ELIGIBILITY.
- (a) Divestment by any person within 2 years prior to the date of making application for aid shall, unless shown to the contrary, be presumed to have been made in contemplation of receiving aid and shall create ineligibility for this aid until the value of the divested amount is expended by or on behalf of the person's maintenance need and medical care.
 - (b) To rebut the presumption that divestment was made in contemplation of seeking aid, the applicant shall furnish clear and convincing evidence to establish that the transaction was exclusively for some other purpose. For example, applicants may rebut the presumption that the divestment was done in contemplation of receiving aid by showing by clear and convincing evidence that, at the time of divesting, the applicants had provided for their future maintenance needs and medical care.
 - (c) Divestment shall only be considered when the net value of all of the properties disposed of exceeds \$1500.
 - (d) When property is owned by two or more persons, the expected share of the value 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.
 - (e) Divestment does not occur in cases of division of property as part of a divorce or separation action, loss of property due to foreclosure or repossession of property due to failure to meet payments.
- (6) REMOVING DIVESTMENT AS A BARRIER TO ELIGIBILITY:
- (a) Divestment shall no longer be a barrier to eligibility:
 - 1. If the amount of divestment to be satisfied is \$12,000 or less, when the sum of the divestment has been expended for maintenance needs and medical care or two years have elapsed since the date of making application, whichever occurs first; or,
 - 2. If the amount of divestment to be satisfied exceeds \$12,000, when the entire sum of the divestment has been expended for maintenance needs and medical care.

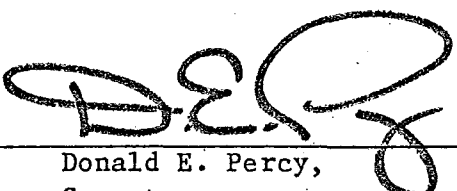
(b) The expended amounts shall be calculated monthly as follows:

1. For persons in intermediate care facilities, skilled nursing facilities or inpatient psychiatric facilities, the amount is the total cost of the institutional care.
2. For any persons not under subd. 1, the amount is the medical care expenses for these persons plus the appropriate medically needy income limit for either aid to families with dependent children or supplemental security income, depending upon which of those two programs they would be eligible for medical assistance under were it not for divestment.

The rules contained in this order shall take effect on the first day of the month following publication in the WISCONSIN ADMINISTRATIVE REGISTER pursuant to authority granted by s. 227.026(1), Stats.

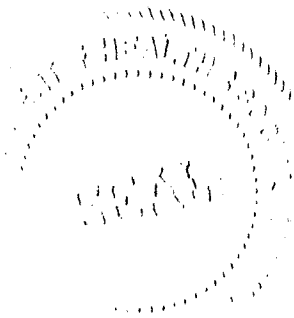
WISCONSIN DEPARTMENT OF
HEALTH AND SOCIAL SERVICES

By: _____


Donald E. Percy,
Secretary

Dated: 5-15-81

Seal:





State of Wisconsin \ DEPARTMENT OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE SECRETARY
1 WEST WILSON STREET
MADISON, WISCONSIN 53702

May 15, 1981

Mr. Orlan Prestegard
Revisor of Statutes
411 West, State Capitol
Madison, Wisconsin 53702

Dear Mr. Prestegard:

As provided in section 227.023, Wis. Stats., there is hereby submitted a certified copy of HSS 103.12 relating to disposal of property at less than fair market value (divestment) in order to qualify for Medical Assistance.

This rule is being submitted to the Secretary of State as required by section 227.023, Wis. Stats.

Sincerely,

A handwritten signature in black ink, appearing to read 'D.E.P.' with a large, stylized flourish at the end.

Donald E. Percy
SECRETARY

Enclosure

