

Chapter HSS 103

ELIGIBILITY FOR MEDICAL ASSISTANCE

| | | | |
|-------------|---|-------------|--|
| HSS 103.01 | Introduction (p. 27) | HSS 103.065 | Divestment on or after August 9, 1989 (p. 42-1) |
| HSS 103.03 | Non-financial conditions for eligibility (p. 27) | HSS 103.07 | Income (p. 42-4) |
| HSS 103.04 | Asset and income limits (p. 33) | HSS 103.08 | Beginning of eligibility (p. 45) |
| HSS 103.05 | Determining assets and income in child-only cases (p. 35) | HSS 103.09 | Termination of medical assistance (p. 46) |
| HSS 103.06 | Assets (p. 37) | HSS 103.10 | Redetermination of eligibility (p. 47) |
| HSS 103.063 | Divestment prior to August 9, 1989 (p. 41) | HSS 103.11 | Presumptive eligibility for pregnant women (p. 47) |

Note: Chapter HSS 103 as it existed on February 28, 1986, was repealed and a new chapter HSS 103 was created effective March 1, 1986.

HSS 103.01 Introduction. (1) **PERSONS ELIGIBLE.** (a) Eligibility for medical assistance (MA) shall be determined pursuant to ss. 49.46 (1) and 49.47 (4), Stats., and this chapter, except that MA shall be provided without eligibility determination to persons receiving AFDC or SSI.

(b) Presumptive eligibility for pregnant women shall be determined under s. 49.465, Stats., and this chapter.

(2) **SINGULAR ENROLLMENT.** No person may be certified eligible in more than one MA case.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; renum. (1) to be (1) (a) and cr. (1) (b), Register, February, 1988, No. 386, eff. 3-1-88.

HSS 103.03 Non-financial conditions for eligibility. In order to be eligible for MA, a person shall meet both non-financial conditions for eligibility in this section and financial conditions for eligibility under s. HSS 103.04. The non-financial conditions for eligibility are:

(1) **AFDC-RELATEDNESS OR SSI-RELATEDNESS.** (a) *Requirement.* To be non-financially eligible for MA, applicants shall be AFDC-related or SSI-related.

(b) *AFDC-related persons.* In this subsection, "AFDC-related" means a person who meets one of the following conditions:

1. The person is pregnant and meets the conditions specified in s. 49.46 (1) (a)1m, 49.465 or 49.47 (4) (a)2, Stats.;
2. The person is a dependent child as defined in s. 49.19 (1) (a), Stats.;
3. The person is a caretaker relative as defined in s. 49.19 (4) (d) and (dm) (intro.), Stats.; or
4. The person is a foster child under 19 years of age living in a foster home licensed under s. 48.62, Stats., or is a child in a subsidized adoption placement under s. 48.975, Stats.

(c) *SSI-related persons.* In this subsection, "SSI-related person" means a person who meets one of the following conditions:

1. The person is age 65 or over; or
2. The person is blind or disabled.

(d) *Verification of blindness or disability.* Except as provided under par. (e), the blindness or disability claimed under par. (c)2 shall be verified in one of the following ways:

1. By presentation of a current old age and survivors disability insurance (OASDI) disability award notice;
2. By presentation of a current medicare card indicating blindness or disability; or
3. By receipt of a disability determination made by the department's bureau of social security disability insurance, along with current medical reports.

(e) *Presumption of disability in an emergency.* 1. Under emergency circumstances, a person may be presumed disabled for purposes of demonstrating SSI-relatedness and be eligible for MA without the verification required under par. (d).

Next page is numbered 31

a source active in the market for land contracts in Wisconsin proving that his or her interest in the land contract cannot be sold.

History: Cr. Register, February, 1936, No. 362, eff. 3-1-86; am. (1) (d), r. and recr. (1) (e), Register, January, 1987, No. 373, eff. 2-1-87; am. (6), cr. (14), Register, July, 1989, No. 403, eff. 8-1-89.

HSS 103.063 Divestment prior to August 9, 1989. (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.

(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 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 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.

(2) **DIVESTMENT OF NON-HOMESTEAD PROPERTY. (a) Amount of divestment.** For any person who disposed of a resource, except a homestead or other exempt 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, the agency shall determine the amount of the divestment in the following manner:

1. If the compensation received is less than net market value, the difference between the compensation received and the net market value is the divested amount and shall be considered an asset.

2. If the divested amount plus other nonexempt assets are equal to or less than the appropriate assets limit, the divestment shall not be considered a bar to eligibility.

3. If the divested amount plus the other nonexempt assets are greater than the appropriate assets limit, the excess over this limit shall be the amount of divestment to be expended for maintenance needs and medical care.

(b) **Divestment as a barrier to eligibility.** 1. Divestment by any person within 2 years before or at any time after his or her most recent application for MA or any review of eligibility shall, unless shown to the contrary, be presumed to have been made in contemplation of receiving MA. Divestment bars eligibility for MA except as provided in subds. 2 and 3 and par. (c).

2. To rebut the presumption that divestment was made in contemplation of seeking aid, the applicant shall furnish convincing evidence to establish that the transaction was exclusively for some other purpose. For example, the applicant may rebut the presumption that the divestment was done in contemplation of receiving aid by showing by convinc-

ing evidence that at the time of divesting the applicant had provided for future maintenance needs and medical care.

3. Divestment shall only be considered a barrier to eligibility when the net market value of all the resources disposed of exceeds the medically needy asset levels in s. 49.47 (4) (b) 3, Stats.

4. 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 is not divestment.

(c) *Removing divestment as a barrier to eligibility.* 1. Divestment is no longer a barrier to MA eligibility for persons who are determined to have divested non-homestead property:

a. If the divested amount is \$12,000 or less, when the sum of the divestment has been expended for maintenance needs and medical care of the applicant or recipient or when 2 years have elapsed since the date of divestment, whichever occurs first; or,

b. If the divested amount exceeds \$12,000, when the entire sum of the divestment has been expended for maintenance needs and medical care of the applicant or recipient.

2. The amount expended for maintenance needs and medical care of the applicant or recipient shall be calculated monthly, as follows:

a. For a non-institutionalized person, the expended amount is the medical care expenses for the person plus the appropriate medically needy income limit for either AFDC or SSI, depending upon which program the person would be eligible for under MA, were it not for the divestment; and

b. For a person institutionalized in a SNF, ICF or inpatient psychiatric facility, the expended amount is the total cost of the institutional care.

(3) **DIVESTMENT OF HOMESTEAD PROPERTY.** (a) *Applicability.* Divestment by any person of his or her homestead property is a barrier to eligibility only if he or she is a resident of an SNF, ICF or inpatient psychiatric facility.

(b) *Amount of divestment.* A person who is a resident of an SNF, ICF or inpatient psychiatric facility who disposed of his or her homestead for less than fair market value on or after July 2, 1983, but within 2 years before or at any time after his or her most recent application for MA or any review of his or her eligibility for MA, shall have the amount of divestment determined in the same manner as in sub. (2) (a).

(c) *Divestment as a barrier to eligibility.* 1. Divestment of a homestead by any person residing as an inpatient in an SNF, ICF or inpatient psychiatric facility within 2 years prior to the date of his or her most recent application for MA or any review of his or her eligibility for MA, shall, unless shown to the contrary, be presumed to have been made in contemplation of receiving MA. Divestment bars eligibility for MA except as provided in subds. 2 and 3 and par. (d).

2. To rebut the presumption that divestment was made in contemplation of receiving aid, the applicant shall furnish convincing evidence to establish that the transaction was exclusively for some other purpose.

For example, the applicant may rebut the presumption that the divestment was done in contemplation of receiving aid by showing by convincing evidence that, at the time of divesting, the applicant had provided for his or her future maintenance needs and medical care.

3. Divestment shall only be considered a barrier to eligibility when the net market value of all the resources disposed of exceeds the medically needy asset levels in s. 49.47 (4) (b)3, Stats.

4. Divestment does not occur in cases of 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.

(d) *Removing divestment as a barrier to eligibility.* 1. Divestment of a homestead is no longer a barrier to eligibility for institutionalized persons:

a. If the amount of divestment to be expended for maintenance needs and medical care is less than the average MA expenditures for 24 months of care in an SNF, when the entire amount of the divestment is expended for this care, or 2 years has elapsed since the date of the divestment, whichever occurs first; or

b. If the amount of divestment to be expended for maintenance needs and medical care is greater than the average MA expenditure for 24 months of care in an SNF, when the entire amount of the divestment has been expended.

2. Expended amounts shall be determined, as long as the person is institutionalized, by using the average monthly MA expenditure, statewide, for care provided in an SNF.

3. An individual who is an inpatient in a SNF, ICF or inpatient psychiatric facility who has been determined to have divested a homestead, may be found eligible if:

a. It is shown to the satisfaction of the department that the individual can reasonably be expected to be discharged from the medical institution and return to that homestead;

b. The title to the homestead was transferred to the individual's spouse or child who is under age 21 or is blind or totally and permanently disabled according to a determination made by the department's bureau of social security disability insurance;

c. It is shown to the satisfaction of the department that the individual intended to dispose of the homestead either at fair market value or for other valuable consideration; or

d. It is determined by the department that the denial of eligibility would work undue hardship on the individual.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; renum. from HSS 103.02 and am., cr. (1), Register, April, 1990, No. 412, eff. 5-1-90.

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

Register, April, 1990, No. 412

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. (4) (d) 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.

History: Cr. Register, March, 1990, No. 412, eff. 5-1-90.

HSS 103.07 Income. (1) SPECIAL SITUATIONS OF INSTITUTIONALIZED PERSONS. (a) *Support received by institutionalized persons.* 1. Any financial support or contribution received by an institutionalized person shall be considered available when determining the eligibility of that person for MA.

2. The income and assets of the parents of children under age 18 who reside in institutions shall be evaluated by the department to determine whether, pursuant to s. 46.10 (14), Stats., collections may be made from one or both parents. If the child is residing in an institution not specified in s. 46.10 (14), Stats., but the institution is approved to receive MA payments, the parental liability shall be the same as that provided in s. 46.10 (14), Stats., and collected in the same manner.

Register, April, 1990, No. 412

3. The agency shall decide if the spouse of an institutionalized applicant or recipient should be referred for support action under s. 52.01, Stats. When deciding whether to refer for support action, the agency shall consider the spouse's basic essential needs and present and future expenses. In no case may support from the spouse of an institutionalized applicant or recipient be pursued when the spouse's assets, not counting homestead property and a motor vehicle, are less than \$1,500 and when the spouse's income is less than monthly need as specified in par. (b) 1. and 2.

(b) *Allocation of institutionalized person's income to dependents outside the institution.* No allocation may be made from an institutionalized applicant's or recipient's income to a spouse who is eligible for SSI but who refuses to obtain SSI. No allocation may be made to a spouse or to minor children under the spouse's care if the spouse or any of the children are receiving AFDC or SSI. Otherwise, allocations shall be made as follows:

1. If the spouse is caring for a minor child for whom either the institutionalized person or the spouse is legally responsible, the AFDC assistance standard plus expenses that would be allowed under s. HSS 103.04 (3) shall be used to determine the need of the spouse and children. If their total net income is less than their need, income of the institutionalized person shall be allocated in an amount sufficient to bring the spouse's and children's income up to their monthly need. In this subdivision, "total net income" means income equal to unearned income plus net earned income, and "net earned income" means income equal to gross earned income minus work-related expenses according to requirements of AFDC. Income disregards of the AFDC program under 45 CFR 233.20 (a) shall be used as appropriate in computing income.

2. If the spouse is not caring for a minor child, the SSI payment level for one person living in that person's own household shall be used to determine the spouse's monthly need. The spouse's earned income shall be netted by subtracting the work-related expenses according to sub. (3) and \$20 from earned or unearned income or both. If the spouse's net income is less than the spouse's monthly need, income of the institutionalized person may be allocated in an amount sufficient to bring the spouse's income up to monthly need. Income disregards of the SSI program under 20 CFR 416.1112 and 416.1124 shall be used as appropriate in computing income.

3. The following amounts shall be excluded when computing the income of the spouse and children under subd. 1 or the spouse alone under subd. 2:

- a. All earnings of a child less than 14 years old, or less than 18 years old when the child is a full-time student;
- b. All earnings of a child less than 18 years old who attends school part-time and is employed fewer than 30 hours a week;
- c. Any portion of any grant, scholarship or fellowship used to pay the costs of tuition, fees, books and transportation to and from classes;
- d. Amounts received for foster care or subsidized adoption;
- e. The bonus value of food stamps and the value of foods donated by the federal department of agriculture;

- f. Home produce grown for personal consumption; and
- g. Income actually set aside for the post-high school education of a child who is a junior or senior in high school.

(c) *When both spouses are institutionalized and there is an application for MA.* When both spouses are institutionalized, the following shall apply:

1. If one spouse applies for MA, the total income of both spouses may be combined to ascertain if their combined income is less than total need, provided that the spouse not applying has income exceeding that spouse's needs and is willing to make that income available;

2. If the combined income of both spouses is less than total need, separate determinations shall be made to see if either spouse has excess income. Any excess may be allocated to the other spouse. Either one or both of the spouses may be eligible depending on income allocation; and

3. If the combined income of both spouses exceeds total need, separate determinations shall be made. Only the actual amount of income made available from one spouse to the other may be used in determining the eligibility of the other spouse. If the spouse refuses to make a reasonable amount available, the agency shall review the case under par. (a) 3. to determine if legal action for support should be taken pursuant to s. 52.01, Stats.

(d) *Computing income available towards cost of care.* Institutionalized recipients of MA shall apply their available income toward the cost of their care. In this paragraph, "available income" means any remaining income after the following reductions are made:

1. Unearned income, including support actually received, up to the personal needs allowance allowed;

2. If employed, the first \$65 and one-half of the remainder of gross earnings;

3. The cost of health insurance;

4. Necessary medical or remedial care recognized under state law but not covered by MA;

Next page is numbered 43