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[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

MDV/143860

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 14, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on October 30, 2012, at Waukesha, Wisconsin.

The issue for determination is whether the Petitioner is entitled to MA Institutional Long Term Care based on an inadvertent notice of eligibility issued by the agency.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Petitioner's Representative:

Attorney Edmond J. Vaklyes Jr  
707 W Moreland Blvd Ste 9  
Waukesha, WI 53188-2400

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Karen Pearson

Waukesha County Health and Human Services  
500 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On November 15, 2011, an application was filed on behalf of the Petitioner for Medicaid Long-Term Institutional Care.

3. The agency processed the application of November 15, 2011. Based on an undisputed divestment of assets, the agency determined the Petitioner was not eligible for Institutional MA and imposed a divestment period of November 1, 2011 – December 28, 2014. On December 21, 2011, the agency issued a manual Positive Notice notifying the Petitioner that her application was approved for “card services only” effective November 1, 2011.
4. On February 7, 2012, there was a partial repayment to the Petitioner of divested funds. The new divestment amount was calculated as \$220,019.41 and a new divestment period of November 1, 2011 – August 18, 2014 was imposed.
5. On February 10, 2012, the agency issued a manual Negative Notice notifying the Petitioner that her application for Medicaid was denied for the period of November 1, 2011 – August 18, 2014 due to divestment. It further noted that the Petitioner remained eligible for card services only. A Divestment Penalty and Undue Hardship Notice was also issued to the Petitioner on this date.
6. On March 21, 2012, the agency’s automated CARES system issued a Notice of Decision to the Petitioner notifying her that as of April 1, 2012, she was enrolled in Medicaid Nursing Home Long Term Care with a monthly cost share of \$1,192. The Petitioner paid the monthly cost share to the nursing home from April 1, 2012 – September 1, 2012.
7. On August 23, 2012, the agency sent an email to the Petitioner’s representative indicating that notices generated from the CARES system regarding Petitioner’s eligibility and cost share should be disregarded and the manual notice regarding the divestment period is correct. It further indicates that the nursing home and hospice were notified of the divestment.
8. On September 4, 2012, the agency’s CARES system issued a Notice of Decision to the Petitioner’s representative notifying him that her Nursing Home Long Term Care benefits would end effective October 1, 2012 due to the Petitioner’s death.
9. On September 14, 2012, the Petitioner’s representative filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

Medicaid is a joint federal-state program which is intended to provide medical care to low-income individuals and families. Institutional Medicaid is that branch of Medicaid which pays expenses associated with long-term care in nursing homes and other facilities and is available to individuals with less than \$2,000 in assets. To prevent individuals from qualifying for Institutional Medicaid by giving large amounts of cash or property to family, friends or others, the program imposes a series of divestment rules where such transactions have taken place, Wis. Stats. §49.453. A divestment of property at less than fair market value during a look-back period triggers a period of ineligibility equal to the number of months that the transferred property would have funded the donor’s institutional care, Wis. Stats. §49.453(2), (3).

It is undisputed that there was a divestment of Petitioner’s assets under Wis. Stats. §49.453.

Petitioner takes the position that the automated CARES notice of March, 2012 superseded the manual notices of December, 2011 and February, 2012. Petitioner asserts that the March, 2012 CARES notice advised petitioner of her eligibility for LTC-Institutional Medicaid and stated that Petitioner would be liable for a cost share of \$1,192/month. Petitioner asserts that she had a right to rely on the automated notice that she was eligible for Institutional Medicaid. The Petitioner pointed out that two previous DHA decisions, specifically DHA Case Nos. MDV-40/88711 and MED-67/70604, with similar facts found in favor of the petitioners based on the same argument.

The agency testified that, because the Petitioner was eligible for MA card services only, the agency had to suppress notices from the CARES system that are automatically generated. It successfully suppressed the automated notices with the exception of the March notice. From the agency's point of view, the inadvertently-issued automated notice in March does not and cannot make the Petitioner eligible for Institutional MA when she was clearly informed in the December and February notices that she would not be eligible until 2014.

I have reviewed the two previous DHA decisions referred by the Petitioner. I first note that previous DHA decisions hold no precedential value and I am not, therefore, bound by those decisions. I also find that these previous cases can be factually distinguished from the instant case. In both of the previous cases, the petitioners had been properly determined to be eligible for Institutional MA and had been properly receiving Institutional MA benefits. After a period of time in which the recipients were eligible for and properly received benefits, the recipients were given or inherited assets that were divested, making them ineligible for a period of time. As in this case, the agency issued manual notices regarding the divestment penalty period. As in this case, the CARES automated system also generated notices that improperly advised the petitioners that they remained eligible for Institutional MA. The ALJs in those cases found that the agency's subsequent notices advising the petitioners that they were not, in fact, eligible as indicated in the CARES notices were inadequate, untimely and in violation of due process requirements.

The minimum standards of due process require that a recipient of public assistance receive "timely and adequate notice detailing the reasons for a proposed termination," *Goldberg v. Kelly*, 397 U.S. 254, 267 - 8, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970). Unlike the previous DHA cases, in this case, the Petitioner was never eligible for Institutional MA benefits and was properly notified in February, 2012 that she would not be eligible until August, 2014. The divestment was not disputed by the Petitioner nor was the divestment penalty period ever disputed or appealed. Because the petitioners in the previous cases had been eligible for Institutional MA before becoming ineligible, the inconsistent notices issued by the agency could have created confusion.

In this case, the Petitioner was aware that she was not eligible until August, 2014 and any argument that the Petitioner was not aware of this is disingenuous. The Petitioner's application of November, 2011 was processed and a proper determination was made that she was not eligible for Institutional MA until 2014 due to the divestment of \$220,019.41. This is undisputed. She was clearly advised of the status of her ineligibility and divestment penalty period in February. An error by the agency in sending an automated notice in March, 2012 informing the Petitioner that she is eligible cannot make the Petitioner eligible where it is clear, under federal and state regulations, that she is not eligible. The improperly issued notice cannot supersede the federal and state regulations regarding eligibility. There was no violation of due process because the Petitioner was never eligible for the benefits and never received any benefits. Therefore, there was no "termination" of benefits to which the Petitioner was entitled which would require timely and adequate notice.

#### **CONCLUSIONS OF LAW**

The Petitioner was provided proper notice in February, 2012 that she was not eligible for Institutional MA until August, 2014. The inadvertent issuance of a positive notice in March, 2012 cannot supersede federal and state regulations regarding eligibility.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby is, dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 3rd day of December, 2012

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 3, 2012.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability  
[evaklyes@waldenlaw.net](mailto:evaklyes@waldenlaw.net)