



Date: April 28, 2017

DMS Operations Memo 17-21

To: Income Maintenance Supervisors
Income Maintenance Lead Workers
Income Maintenance Staff

Affected Programs:

- | | |
|---|--|
| <input checked="" type="checkbox"/> BadgerCare Plus | <input type="checkbox"/> Caretaker Supplement |
| <input type="checkbox"/> FoodShare | <input type="checkbox"/> FoodShare Employment and Training |
| <input checked="" type="checkbox"/> Medicaid | |
| <input type="checkbox"/> SeniorCare | |

From: Rebecca McAtee, Bureau Director
Bureau of Enrollment Policy and Systems
Division of Medicaid Services

Clarification of Undue Hardship Policy for Long-Term Care Services Covered Under BadgerCare Plus and Wisconsin Medicaid

CROSS REFERENCE

- Medicaid Eligibility Handbook, [Section 22.4 Undue Hardship](#)
- Process Help, [Section 3.7 Running With Dates](#), [Section 17.1.8 Real Property](#), [Section 41.3 Overrides on CARES Mainframe AIOE/AGOE](#), [Chapter 45 Electronic Case File \(ECF\)](#), and [Section 72.1 Institutional Divestment](#)

EFFECTIVE DATE

Immediately

PURPOSE

This Operations Memo clarifies undue hardship policy for long-term care services covered under BadgerCare Plus and Wisconsin Medicaid.

POLICY

There are no changes in policy associated with this Memo.

Note: The Medicaid Eligibility Handbook and Process Help will be updated in future handbook releases to reflect the clarifications in this Memo.

UNDUE HARDSHIP

Undue hardship may apply only when an applicant's or member's eligibility for coverage of long-term care services is denied or terminated in any of the following situations:

- A community spouse has refused to sign the application or provide required information (refer to the [Medicaid Eligibility Handbook, Section 2.5.3 Spousal Impoverishment Medicaid Signatures](#) for more information).
- The applicant's or member's home has equity interest of more than \$750,000 (refer to the [Medicaid Eligibility Handbook, Section 16.8.1.4 Home Equity Over \\$750,000.00](#) for more information).
- A divestment penalty period has been imposed (refer to the [Medicaid Eligibility Handbook, Section 17.4 Exceptions](#) for more information).
- A spousal impoverishment case has excess assets (refer to the [Medicaid Eligibility Handbook, Section 18.4.5 Undue Hardship](#) for more information).

Undue hardship occurs if denial or termination of an applicant's or member's eligibility for coverage of long-term care services would deprive the person of any of the following:

- Medical care, which then endangers the person's health or life
- Food
- Clothing
- Shelter
- Other necessities of life

BED HOLD PAYMENTS

As a reminder, bed hold payments can only be made when an applicant or member requests an undue hardship waiver because his or her institutional long-term care services were denied due to a divestment penalty period (refer to the [Medicaid Eligibility Handbook, Section 22.4.7 Bed Hold Payments and Notifications \[Divestment Only\]](#) for more information).

PROCESS

UNDUE HARDSHIP WAIVER REQUEST PROCESS

SEND UNDUE HARDSHIP LETTER AND WAIVER REQUEST FORM

If an applicant or member is denied long-term care services as a result of one of the situations listed above, income maintenance (IM) workers are required to manually send the applicant or member the following:

- [Undue hardship member letter](#) titled "You Can Request an Undue Hardship Waiver for Your Denied Medicaid Long-Term Care Services" (F-10187)
- [Undue Hardship Waiver Request form](#) (F-10193)

Workers are required to document in case comments that the letter and form have been sent and to scan a copy of both into the Electronic Case File (ECF).

Note: To streamline processing, a new document code, "UH," will be added to the undue hardship letter and Undue Hardship Waiver Request form. For information about scanning these forms into the ECF, refer to [Process Help, Chapter 45 Electronic Case File \(ECF\)](#) and the [Electronic Case File Handbook](#),

[Section 2.1 ECF Workflow](#). Workers will be able to search for these forms in the ECF using the case number and PIN.

APPROVE OR DENY UNDUE HARDSHIP WAIVER REQUESTS

Income maintenance agencies are required to process all requests for an undue hardship waiver, regardless of whether the request is received timely (within 20 calendar days of the undue hardship notice mailing date) or untimely (more than 20 calendar days after the undue hardship notice mailing date). Workers are required to document in case comments that a request was received and whether it was timely or untimely and to scan all requests and documentation into the ECF.

Income maintenance agencies are required to approve or deny an undue hardship waiver request within 30 calendar days of receiving the request. Only valid requests can be approved. A valid request includes either a completed Undue Hardship Waiver Request form or a written and signed request containing all of the same information, as well as any required documentation.

If a request is denied, workers are required to manually complete and send a [Notice of Denial of Benefits/Negative Change in Benefits](#) (F-16001) to inform the applicant or member of the denial. To indicate that the request has been denied, workers should check the “Your Undue Hardship Waiver Request was denied. See the additional comments section below for more information.” box and add applicable comments.

If a request is approved, workers are required to determine the appropriate start date for the previously denied long-term care services, provided the applicant or member is still otherwise eligible for long-term care services:

	Start Date if Undue Hardship Waiver Request Was Received Timely	Start Date if Undue Hardship Waiver Request Was Received Untimely
New Application For:		
Institutional long-term care	Whichever is later of the following: <ul style="list-style-type: none"> • Date of most recent institutionalization. • First of the month of the filing date or any backdated months. 	The date the undue hardship waiver request was received.
All home and community-based services*	The enrollment date given to the IM worker by the Aging and Disability Resource Center (ADRC) or county waiver agency.	The enrollment date given to the IM worker by the ADRC or county waiver agency. The date cannot be before the date the undue hardship waiver request was received.

	Start Date if Undue Hardship Waiver Request Was Received Timely	Start Date if Undue Hardship Waiver Request Was Received Untimely
Ongoing Case For:		
Institutional long-term care	The date services were first denied.	The date the undue hardship waiver request was received.
All home and community-based services* when the denial caused a disenrollment	The new enrollment date given to the IM worker by the ADRC or county waiver agency.	The new enrollment date given to the IM worker by the ADRC or county waiver agency. The date cannot be before the date the undue hardship waiver request was received.
All home and community-based services* when the applicant or member has been continuously served by the managed care organization	The date services were first denied.	The date the undue hardship waiver request was received.

*Includes the Community Integration Program (CIP) I, CIP II, Community Options Program Waiver (COP-W), Program of All-Inclusive Care for the Elderly (PACE), Family Care, Family Care Partnership (also known as Partnership or Wisconsin Partnership Program [WPP]), and IRIS (Include, Respect, I Self-Direct)

If a request is approved in a case in which a divestment penalty period has been imposed, IM workers must also determine the date from which the divestment penalty period must be waived. If the undue hardship waiver request was received timely, the entire divestment penalty period is waived. If the undue hardship waiver request was received untimely, the divestment penalty period is waived beginning on the day the undue hardship waiver request was received.

After determining the appropriate start date of the previously denied long-term care services, workers are required to manually complete and send the [Notice of Approval of Benefits/Positive Change in Benefits](#) (F-16015) to inform the member of the approval. Workers should check the “Your Undue Hardship Waiver Request was approved. See the additional comments section on the next page for more information.” box, enter the applicable start date of the previously denied long-term care services, and add applicable comments.

Once a request for an undue hardship waiver is approved, a new request does not need to be completed at renewal unless the circumstances regarding the original reason for the request have changed.

Example 1: Bob is an institutionalized member with a community spouse. Bob was determined to be over the asset limit and unable to receive long-term care services; however, his community spouse had control of the couple’s assets and refused to cooperate with transferring them into her name. As a result, Bob submitted a request for an undue hardship waiver based on the date of his impending discharge from the institution back to his home and information from his doctor that he could not be appropriately cared for at home. His request was approved. Three years later, Bob reports that his community spouse passed away, and he now controls the assets. Bob’s previously approved undue hardship waiver would no longer be in effect as he is no longer on a spousal impoverishment case.

CARES WORKER WEB

The process for indicating that eligibility for long-term care services has been denied or that an undue hardship waiver has been approved differs based on the situation. The instructions below outline the steps workers should take, depending on the situation, to deny eligibility for long-term care services and to open eligibility if an undue hardship waiver request is approved.

COMMUNITY SPOUSE HAS REFUSED TO COOPERATE

DENY ELIGIBILITY FOR LONG-TERM CARE SERVICES

If long-term care services are denied because a community spouse has refused to sign the application or provide required information, workers are required to select **No** from the Health Care Signature drop-down menu in the “Signature Details” section of the General Case Information page to deny the applicant’s or member’s long-term care eligibility.

The screenshot displays the 'General Case Information' form. The 'Signature Details' section is expanded, showing several signature options. The 'Health Care Signature' dropdown menu is highlighted with a red box and currently displays 'N - No'. Other signature options include 'FoodShare Signature', 'BC+ Core Plan Signature', 'CTS Signature', and 'Child Care Signature'. The 'Information Provider' section shows 'First Name' as DAFF, 'Last Name' as ODIL, and 'IP In Household' as Yes. The 'Case File Location' section shows 'File Location' as IN - INTAKE and 'File Location Date' as 10/18/2016. The 'Effective Period' section shows 'Last Updated' as 01/10/2017. There are 'Cancel' and 'Reset' buttons at the top right, and a 'Find Matching Cases' button at the bottom right.

Figure 1 General Case Information Page

Workers should then enter case comments documenting the actions taken and check the **Flag as Important?** box on the Case Comments page.

OPEN ELIGIBILITY FOR LONG-TERM CARE SERVICES WHEN AN UNDUE HARDSHIP WAIVER IS APPROVED

If an applicant's or member's request for an undue hardship waiver is approved, workers are required to select **Yes** from the Health Care Signature drop-down menu in the "Signature Details" section of the General Case Information page and then enter case comments documenting the actions taken and check the **Flag as Important?** box on the Case Comments page.

HOME HAS EQUITY INTEREST OF MORE THAN \$750,000

DENY ELIGIBILITY FOR LONG-TERM CARE SERVICES

People who have home equity interest of more than \$750,000 and do not have a child or spouse living in their home are ineligible for long-term care services; however, they may instead be eligible for Medicaid card services if they are eligible for Institutional Medicaid (refer to the [Medicaid Eligibility Handbook, Section 17.15 Medicaid Card Services](#)). Workers should explore eligibility for other non-long-term care programs for these people.

If an applicant or member is applying for a **home and community-based waiver program** and if long-term care services are denied **only** because the applicant's or member's home has equity interest of more than \$750,000, workers are required to do the following to fail long-term care eligibility:

1. On the Community Waivers page, update the slot question to **No** to prevent the case from opening inadvertently.
2. Suppress the CARES-generated notice and manually issue the Notice of Denial of Benefits/Negative Change in Benefits to provide notification of the denial due to excess assets. On the Notice of Denial of Benefits/Negative Change in Benefits, add the following comment: "Your home equity exceeds \$750,000, Wis. Stat. § 49.47(4)(bc)."
3. Enter case comments documenting the actions taken, and check the **Flag as Important?** box on the Case Comments page.

If an applicant or member is applying for **Institutional Medicaid** and if long-term care services are denied **only** because the applicant's or member's home has equity interest of more than \$750,000, workers are required to do the following to fail long-term care eligibility:

1. Email the DHS CARES Call Center at DHSCARESCallCenter@dhs.wisconsin.gov to report that the applicant or member is eligible for Medicaid card services only.
2. Suppress the CARES-generated notice and manually issue the Notice of Denial of Benefits/Negative Change in Benefits to provide notification of the denial due to excess assets. On the Notice of Denial of Benefits/Negative Change in Benefits, add the following comment: "Your home equity exceeds \$750,000, Wis. Stat. § 49.47(4)(bc). As a result, you are not eligible for long-term care services; however, you may be eligible for Medicaid card services instead."
3. Enter case comments documenting the actions taken, and check the **Flag as Important?** box on the Case Comments page.

OPEN ELIGIBILITY FOR LONG-TERM CARE SERVICES WHEN AN UNDUE HARDSHIP WAIVER IS APPROVED

If an applicant or member was denied eligibility for a **home and community-based waiver program** only because the applicant's or member's home has equity interest of more than \$750,000 and the

applicant's or member's request for an undue hardship waiver is approved, workers are required to do the following:

1. On the Community Waivers page, update the slot question to **Yes**, and run eligibility to open community waivers.
2. Update the program start date to the enrollment date provided by the ADRC or county waiver agency (see the [table on pages 3 and 4 of this Memo](#) for more information).
3. Enter case comments documenting the actions taken, and check the **Flag as Important?** box on the Case Comments page.

If an applicant or member applied for **Institutional Medicaid** and if long-term care services were denied **only** because the applicant's or member's home has equity interest of more than \$750,000, workers are required to contact the fiscal agent at 608-421-6340 to report that the member's request for an undue hardship waiver has been approved and that he or she is eligible for long-term care services.

DIVESTMENT PENALTY PERIOD HAS BEEN IMPOSED

DENY ELIGIBILITY FOR LONG-TERM CARE SERVICES

If long-term care services are denied because a divestment penalty period has been imposed, workers are reminded to follow the instructions in [Process Help, Section 72.1 Institutional Divestment](#) to fail long-term care eligibility appropriately.

Workers should also suppress the CARES-generated notice and manually complete and send the Notice of Denial of Benefits/Negative Change in Benefits to provide notification that long-term care services have been denied as a result of divestment. For applicants or members who applied for a home and community-based waiver program or Institutional Medicaid, workers should add a comment to the notice that includes the following information:

- The amount divested.
- The calculation used to determine the divestment penalty period.
- The beginning and end date of the divestment penalty period.
- A reference to Wis. Stat. § 49.453.

For applicants or members who applied for Institutional Medicaid, workers should also add that the person is not eligible for long-term care services but is eligible for Medicaid card services instead.

OPEN ELIGIBILITY FOR LONG-TERM CARE SERVICES WHEN AN UNDUE HARDSHIP WAIVER IS APPROVED

If an applicant's or member's request for an undue hardship waiver is approved, workers are required to select **UH – Undue Hardship** from the Disregard Reason drop-down menu in the “Additional Information” section of the Transfer/Divestment of Assets page.

Transfer / Divestment of Assets Cancel **Reset**

Total: 1

Effective Period

* Begin Month: 01 / 2017 End Month: MM / YYYY Last Updated: 01/10/2017

Delete Reason:

Additional Information

* Individual: DAFF ODIL 45F PP Sequence: 1

* Type: RP - REAL PROPERTY * Sub-Type: RPCD - CONDO

* Transferred To: JOE FRIEND * Relation: NOT - NOT RELATED

* Verification: OW - OTHER ACCEPTABLE WRITTEN S

* Divestment Penalty Period Start Date: 10 / 01 / 2016

Disregard Reason: UH - UNDUE HARDSHIP Verification: AF - AGENCY FORM

Dollar Amounts

Figure 2 Transfer/Divestment of Assets Page

SPOUSAL IMPOVERISHMENT CASE HAS EXCESS ASSETS

DENY ELIGIBILITY FOR LONG-TERM CARE SERVICES

If long-term care services are denied because the spousal impoverishment case has excess assets, CWW will correctly deny services.

OPEN ELIGIBILITY FOR LONG-TERM CARE SERVICES WHEN AN UNDUE HARDSHIP WAIVER IS APPROVED

If an applicant's or member's request for an undue hardship waiver is approved, workers are required to complete the following steps:

1. For **all** assets on the case, select **No** from the Available? drop-down menu in the "Additional Information" section.

Liquid Assets Cancel **Reset**

Effective Period

* Begin Month: 01 / 2017 End Month: MM / YYYY Last Updated:

Delete Reason:

Additional Information

* Individual: INDIGO FLOWER 85M HUS Sequence: 0

* Type: CH - CHECKING ACCOUNT * Verification: BS - BANK STATEMENT

* Jointly Owned? N - No * Available? N - No

* Burial? N - No

* Asset Amount: \$ 10000 .

* Verification: BS - BANK STATEMENT

Independence Account Information

Figure 3 Available? Field on the Liquid Assets Page

2. Run eligibility and confirm that only the long-term care eligibility for which the undue hardship waiver was approved is open. Depending on the situation, it may be necessary to run with dates (refer to [Process Help, Section 3.7 Running With Dates](#) for more information) or complete a manual certification to get the correct months of eligibility for the applicant or member. Ensure that other Medicaid subprograms, such as the Medicare Savings Program (MSP) or Medicaid Purchase Plan (MAPP), are not inadvertently confirmed for any months.
3. Once all appropriate months of long-term care eligibility have been confirmed open, return to all of the **community spouse's asset pages**, and select **Yes** from the Available drop-down menu in the "Additional Information" section to update all of the community spouse's assets.

The screenshot shows a web form titled "Liquid Assets" with a "Cancel" button and a "Reset" button. The form is divided into several sections: "Effective Period", "Additional Information", and "Independence Account Information".

- Effective Period:** Includes fields for "Begin Month" (01 / 2017), "End Month" (MM / YYYY), and "Last Updated:". There is also a "Delete Reason" dropdown menu.
- Additional Information:** This section contains several fields:
 - "Individual": INDIGO FLOWER 85M HUS
 - "Type": CH - CHECKING ACCOUNT
 - "Jointly Owned?": N - No
 - "Burial?": N - No
 - "Asset Amount": \$ 10000 .
 - "Sequence": 0
 - "* Verification": BS - BANK STATEMENT (two instances)
 - "* Available?": Y - Yes (highlighted with a red box)
- Independence Account Information:** This section is currently empty.

Figure 4 Available? Field on the Liquid Assets Page

4. Run ongoing eligibility.
5. Use the AIOE/AGOE override with the 024 failure code if any Medicaid subprograms open incorrectly due to the worker's action to reduce the assets (refer to [Process Help, Section 41.3 Overrides on CARES Mainframe AIOE/AGOE](#) for more information).
6. Confirm the appropriate long-term care eligibility as open, and confirm any necessary AIOE/AGOE failures. This will generate applicable text on the Notice of Decision.
7. If an AIOE/AGOE override was necessary to prevent any Medicaid subprograms from opening incorrectly, update the appropriate program request page to **No**, and reconfirm the case. (Eligibility for a Medicaid subprogram should be reevaluated if a change is reported or during renewal since assets may be within the other program limits at that time.)
8. Enter case comments regarding the actions taken, and check the **Flag as Important?** box on the Case Comments page.

The screenshot shows a web interface titled "Case Comments". At the top right are "Cancel" and "Reset" buttons. Below the title is a section labeled "Add/Edit Comments". The form contains the following fields: "Date Entered: 02/27/2017", "Entered By: XXXXX1", "Comment Type: G - General" (with a dropdown arrow), and "Flag as Important?" with a checked checkbox. The "Comment" text area contains the text: "***UNDUE HARDSHIP WAIVER APPROVED*** Spousal case was failing for assets. Undue Hardship waiver request received timely. Updated ALL asset pages to Available "No" and only confirmed MI S open. Updated community spouse asset pages to Available "Yes," reran eligibility, and realized SLMB was trying to open incorrectly so used AIOE/AGOE overrides and confirmed MI S open and SLMB closed. Sent manual positive notice to inform member that Undue Hardship Waiver request was approved." Below the text area is the label "Current Size = 0 characters (1000 characters max.)" and an "Add" button at the bottom right.

Figure 5 Case Comments Page

Example 2: John is determined to be over the asset limit and ineligible for long-term care services; however, John meets spousal impoverishment rules and requests an undue hardship waiver. John is also receiving Medicare and has applied for MSP. John’s request for an undue hardship waiver is approved, so his worker opens home and community-based waivers on his case. CWW then attempts to open Specified Low-Income Medicare Beneficiary (SLMB). Because undue hardship policy does not apply to SLMB (or any other MSP) and John is over the asset limit for MSP, his worker follows the instructions in Process Help, Section 41.3 Overrides on CARES Mainframe AIOE/AGOE, to fail John’s SLMB assistance group. The worker then enters case comments documenting each action taken on the case and checks the Flag as Important? box on the Case Comments page.

CONTACTS

BEPS CARES Information and Problem Resolution Center

DHS/DMS/BEPS/MF