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[REDACTED]

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

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In the Matter of

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MGE - 208717

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on May 16, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the St. Croix County Health & Human Services regarding Medical Assistance (MA), a hearing was held on June 27, 2023, by telephone.

The issue for determination is whether an Individual Retirement Annuity of an ineligible community spouse is an available asset for purposes of the institutionalized spouse's eligibility for Institutional-MA.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner's Representative:**

Attorney Benjamin S. Wright  
Wright Elder Law  
PO Box 375  
New Richmond, WI 54017

**Respondent:**

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]

St. Croix County Health & Human Services  
1752 Dorset Lane  
New Richmond, WI 54017-1063

**ADMINISTRATIVE LAW JUDGE:**

Jason M. Grace  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of St. Croix County. She has resided in a nursing home since November 22, 2022. Her husband remains in the community.
2. On February 27, 2023, the petitioner applied for Institutional-MA. Exhibits R-6 and R-7.
3. By notice dated May 18, 2023, the agency denied the application due to being over the asset limit. The agency determined petitioner had total countable assets of \$105,525.44, and that the asset limit was \$98,254.85. Included in the countable asset determination were two revocable Individual Retirement Annuities owned by petitioner's husband. Those two annuities total \$35,104.49. Exhibits R-7 and P-2.
4. The Individual Retirement Annuities were certified as traditional IRAs by American Equity. Exhibit P-11. They were funded by a transfer from a prior traditional IRA account of the community spouse. Exhibit P-9. The transfer occurred in 2005. Testimony of the community spouse and Exhibit R-4.

**DISCUSSION**

The issue in this case is whether the two Individual Retirement Annuities are exempt assets under MA rules. There are competing provisions in the MA Eligibility Handbook (MEH) at issue here. Under MEH, 16.7.4.2, annuities are generally deemed to be an available asset. However, under MEH, 16.7.20, "work-related retirement benefit plans or individually-owned retirements accounts, such as IRAs or Keoghs, of an ineligible spouse in an EBD case [are exempt]." This policy is mirrored in MEH, 18.4.1 (spousal impoverishment).

It appears the agency's position is that an Individual Retirement Annuity of the community spouse is treated as an available and countable asset under MEH, 16.7.4.2; while an Individual Retirement Account of the community spouse would be exempt under MEH, 16.7.20. A similar issue as involved here was addressed in two prior decisions issued by the Division of Hearings and Appeal. Both decisions were forwarded as exhibits by petitioner's counsel. See, Exhibit P-6 and P-7.

In DHA Case No. MRA-135337, the community spouse had two Individual Retirement Accounts that contained revocable annuities, one of which was labeled as an Individual Retirement Annuity. At issue in that case were similar policy provisions in the MEH as involved here. Of import to the ALJ was that it appeared the IRA annuities were created as part of the community-spouse's employment and had nothing to do with his wife's recent application for MA. The ALJ found that the fact the funds are in an IRA trumps the fact they are also revocable annuities. The ALJ issued a proposed decision finding the community spouse's IRA funds in the revocable annuities to be exempt assets in determining the petitioner's Institutional-MA eligibility. That decision was later adopted by the then Secretary of the Department of Health Services in a Final Decision issued on March 20, 2012.

In DHA Case No. MRA-178406, the community spouse had an Individual Retirement Annuity purchased with funds from a prior retirement account. The ALJ noted the annuity was not created using available assets and was simply rolled over from an IRA into a different type of retirement account. The ALJ cited the decision in DHA Case No. MRA-135337 with approval, finding no flaws in the reasoning. In a decision issued on January 13, 2017, the ALJ found the Individual Retirement Annuity owned by the community spouse to be an exempt retirement account for purposes of the petitioner's application for Institutional-MA.

While the prior decisions are not binding, I do find them persuasive. Like the prior cases, the Individual Retirement Annuities involved here were funded by proceeds from prior retirement accounts of the community spouse, not otherwise available assets. It was unrelated to petitioner's current MA application.

Petitioner's counsel cited SSI rules in support of the argument that the community spouse's Individual Retirement Annuities at issue here should be treated as an exempt asset. Per the SSI Program Operations Manual System (POMS), annuities are listed as a possible retirement fund, as are individual retirement accounts. POMS, SI 01120.210 A.1. It was noted that the POMS indicate that "If an ineligible spouse ... owns a retirement fund, we exclude it ...." POMS, SI 01120.210 E.4

Counsel further cited the SSI rules that indicate "pension funds" of an ineligible spouse are excluded, and that term was further defined as:

.... funds held in *individual retirement arrangements (IRAs)*, as described by the *Internal Revenue Code*, or in work-related pension plans (including such plans for self-employed individuals, sometimes referred to as Keogh plans).

POMS, SI 01330.120 A.1 (*emphasis added*). I performed a keyword search of the Internal Revenue Code and found no definition for "Individual Retirement Arrangements." That term only appeared in an annotation, as was noted by counsel. However, counsel cited IRS Publication 590-A, pg. 7 (2022), which tends to indicate that Individual Retirement Arrangements encompass both Individual Retirement Accounts and Individual Retirement Annuities. The Individual Retirement Annuities at issue here were certified as Traditional IRAs. See, Exhibit P-11.

Based on the record, I find that in this case the two Individual Retirement Annuities of the community spouse are exempt retirement accounts for purposes of petitioner's eligibility for Institutional-MA.

### CONCLUSIONS OF LAW

The two Individual Retirement Annuities of the petitioner's community spouse are exempt retirement accounts for purposes of petitioner's eligibility for Institutional-MA.

**THEREFORE, it is**

**ORDERED**

That this matter be remanded to the agency with instructions to redetermine the petitioner's Institutional-MA application retroactive to February 1, 2023, by excluding the community spouse's two Individual Retirement Annuities. This action shall be taken within 10 days of the date of this decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.


The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

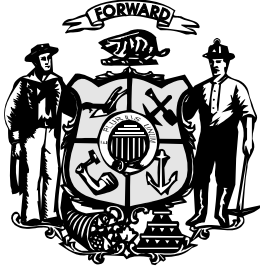
**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 20th day of July, 2023

  
s \_\_\_\_\_  
Jason M. Grace  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on July 20, 2023.

St. Croix County Health & Human Services  
Division of Health Care Access and Accountability  
Attorney Benjamin Wright