

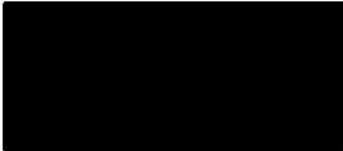


State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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January 15, 2025



[Redacted]

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

RE:

[Redacted]
Case No. MAP - 214590

Dear Parties:

Enclosed is a copy of the Final Decision in the above-referenced matter.

Sincerely,

[Redacted signature]

Shannon Buboltz

Legal Associate Supervisor

c: Western Region For Economic Assistance - email
Division of Health Care Access and Accountability - email
[Redacted]



STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES

In the Matter of

DECISION

Case No: MAP-214590

The attached proposed decision of the Administrative Law Judge dated November 29, 2024 is hereby adopted as the final order of the Department.

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, Madison, WI 53705-9100 **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, Madison, WI, 53703, **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 request (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 15th day
of January, 2025

Kirsten L. Johnson, Secretary
Department of Health Services



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



PROPOSED DECISION

Case #: MAP - 214590

PRELIMINARY RECITALS

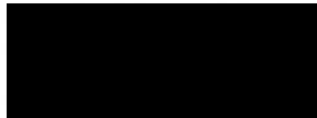
A petition was filed on August 16, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the La Crosse County Department of Human Services regarding Medical Assistance (MA). This telephonic hearing was initially scheduled for September 26, 2024, but was rescheduled at the request of the petitioner to October 30, 2024.

The issue for determination is whether the petitioner's rental property is exempt as a business asset.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

[REDACTED] Disability Benefit Specialist
Adams County ADRC

Respondent:

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

By: [REDACTED]

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Kate J. Schilling

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a [REDACTED] old married resident of Adams County.
2. In May 2024, the petitioner had a stroke and required intensive medical care and treatment. She was in the hospital from the day of her stroke through approximately June 21, 2024, when she was transferred to a skilled nursing facility.
3. On June 19, 2024, the petitioner submitted an application for Medicaid to the agency as it was expected that the petitioner would be institutionalized for at least 30 days. The application was initially processed as a MAPP application rather than an application for long-term care Medicaid.
4. The petitioner had been employed at a local school district but had been unable to work since 5/14/24. She was initially receiving short-term disability insurance and then transitioned to long-term disability insurance in October 2024 ([REDACTED]).
5. After a period of verification requests and submissions, the petitioner was issued a denial for MAPP on August 13, 2024. On the same date, she was also sent a notice that her Community Spouse Asset Share calculation determined the couple had \$115,132.40 in countable assets, and that the couple would have to spend down to \$57,566.20 before the petitioner would be eligible for Medicaid. The asset putting the couple over the \$50,000 threshold for eligibility was a rental property valued at approximately \$105,000.
6. The petitioner's husband was employed as a plumber; however, he was forced to cut down his hours significantly in order to provide the care needed by the petitioner following her stroke. He was planning to move the petitioner out of the skilled nursing facility shortly after the hearing as he felt that she was not receiving adequate care there.
7. As of the date of the hearing, the petitioner owed approximately \$32,000 to the nursing home. The petitioner appealed seeking retroactive payment for the nursing home bill. The petitioner plans to transition to FamilyCare or IRIS community waiver programs upon moving back home so that her husband can have help caring for her.

DISCUSSION

The federal Medicaid Catastrophic Coverage Act of 1988 (MCAA) included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat., §49.455(1).

When initially determining whether an institutionalized spouse is eligible for MA, county agencies are required to review the combined assets of the institutionalized spouse and the community spouse. *Medicaid Eligibility Handbook (MA Handbook)* §18.4.1. All available assets owned by the couple are to be considered. Homestead property, one vehicle, personal and household possessions, and burial spaces are all exempt. In long-term care Medicaid cases, the IRA of a community spouse is exempt as well. The couple's total non-exempt assets then are compared to an "asset allowance" to determine eligibility.

The asset allowance for this couple was \$57,566.20. *MA Handbook* § 18.4.3; see also Wis. Stat., §49.455(6)(b). An additional \$2,000 (the MA asset limit for the institutionalized individual) is then added to the asset allowance to determine the asset limit under spousal impoverishment policy. If the couple's assets are at or below the determined asset limit, the institutionalized spouse is eligible for MA. If the assets exceed the above amount, as a general rule the spouse is not MA eligible. If a married couple has countable assets at or less than \$52,000, the institutionalized spouse is eligible for Medicaid immediately without any spenddown required. *MA Handbook* §18.4.3.

In this case, the couple's house, one vehicle, and the community spouse's IRA are all exempt assets. *MA Handbook* § 16.7.20. The countable assets would be their savings and checking accounts, the remaining four vehicles, the institutionalized spouse's IRA, and the rental property. The countable assets total \$127,226.45. (The agency was incorrectly counting both IRAs as exempt as well as two vehicles as exempt, which is how it came to \$115,132.40 in countable assets.) Without the rental property, the couple only has \$22,226.45 in countable assets.

During the hearing, the petitioner's husband testified that he had to significantly reduce his time at work in order to care for his wife since her stroke in May. He did not believe that she was receiving adequate care in the skilled nursing facility, so he planned to bring her home and be her primary caregiver. He stated that he was only earning \$200-\$300 per week through his current employment, and that he had lost his other job in September because he needed to be with his wife. This means the petitioner's husband only has income of \$860 - \$1,290 per month, and that the income from the rental property will likely be relied on to help the couple meet their basic needs.

The petitioner argues that her rental property should be exempt as a business asset under Wis. Admin. Code §§ DHS 103.06(13)(b); 103.06(12); 103.06(5)(b). The Wis. Admin. Code, § DHS 103.06(5)(b) states:

"If the value of non-homestead property together with the value of the other assets exceeds the asset limit, **the non-homestead property need not be counted as an asset if it produces a reasonable amount of income.** In this paragraph, "reasonable amount of income" means a fair return considering the value and marketability of the property."

(Emphasis added.) Furthermore, Wis. Admin Code § DHS 103.06(13) states:

SPECIAL EXEMPT ASSETS FOR BLIND OR DISABLED PERSONS.
The following assets shall be exempted in determining the eligibility of blind or disabled persons:

- (a) Assets essential to the continuing operation of the person's trade or business;
- (b) Income -producing property;**

(Emphasis added.) The petitioner and her husband filed a Schedule E as part of their annual taxes, and provided a copy to the agency during the verification process. The Schedule E reflects \$11,400 of rental income during the year 2023, which is \$950 per month. The petitioner's husband testified that he manages and maintains the rental property himself.

The agency determined that the rental property was a countable asset since it was non-homestead property and the owners were not in the business of owning multiple rental properties, as required under the "note" within *MA Handbook* § 16.9.2. This is the couple's only rental property, which they have owned since 1999. With the exception of a couple of years when their son lived there, the tenants have been non-relatives with

written lease agreements. The rental property is a three bedroom, one and a half bathroom home that is approximately 1,000 square feet. The current tenant pays \$900 per month.

The MA Handbook states that business assets are exempt assets as long as they are currently operating.

15.6.3.1 Business Assets

The value of property essential to self-support and used in a trade or business is excluded if the business is currently operating for the self-support of the individual. This includes real and personal property (e.g., land, buildings, equipment, and supplies) used in a trade or business and liquid assets used as part of a trade or business.

If the property is not currently operating, it is exempt if there is a reasonable expectation it will resume operating within the next 12 months. The reasonable expectation should be based on the following information:

1. Date of last use
2. Reason property is not in current use
3. Estimated date the person expects to resume use

If the individual decides not to resume operating, the property becomes a countable asset in the month after the decision is made not to resume.

The 12-month limit should only be extended when a disabling condition prevents the person from resuming business use of the property.

(MA Handbook § 15.6.3.1) The MA Handbook also provides that property essential to self-support can be exempt in full (regardless of value) or up to \$6,000 of equity value.

16.9.1 Introduction to Property Essential to Self-Support

Certain assets deemed to be essential to an individual's means of self-support are excluded. These assets fall into three main categories:

- Property used in an established trade or business, which is excluded regardless of its value or rate of return if the business is currently operating for the self-support of the individual or their spouse, or there is a reasonable expectation it will resume operating within the next 12 months (see SECTION 15.6.3.1 BUSINESS ASSETS)
- Nonbusiness property used to produce goods or services essential to self-support, which is excluded up to \$6,000
- Nonbusiness income-producing property, which is excluded up to \$6,000 if it produces at least a six percent rate of return

(MA Handbook § 16.9.1) There is a "note" within the MA Handbook §16.9.2 that states:

Rental property is not considered business property unless the property owner is in the business of renting and managing properties. If a person simply owns a piece of property and is renting it to produce passive income, they are not considered to be the owner of a trade or business.

This notation or policy is not found in any other authorities, including the Wisconsin administrative code or statutes. By saying that a rental property cannot be considered business property in this instance, that means

that it would be considered non-business property and according to the *MA Handbook* §§ 16.9.3 and 16.9.4, only \$6,000 of the property would be exempt. This is in direct conflict with the Wis. Admin Code §§ DHS 103.06(5)(b) and 103.06(13)(2), which does not cap or limit the amount of the exclusion for income-producing non-homestead property. Indeed, Wis. Admin. Code § DHS 103.06(13)(b) appears to be a special carve out provision for people who are blind and disabled. The petitioner was determined to be disabled following her stroke in May and will require long-term care Medicaid for the foreseeable future.

The rental property at issue in this case generates a six percent rate of return. According to the *MA Handbook* § 16.9.4, non-business income-producing property can only exempt up to \$6,000 of value. This rule is in direct conflict with the Wis. Admin. Code § DHS 103.06(5)(b) and 103.06(13)(b) which do not limit the exemption to just \$6,000.

While this issue of a mortgage on the property was not raised during the hearing, I noticed on the Schedule E for the 2023 taxes that there is \$1,190 of mortgage interest listed as an expense. If there is a mortgage against the rental property, the agency should be notified of that as only the equity value of the property should have been listed as an available asset for the Community Spouse Asset Share Calculation.

CONCLUSIONS OF LAW

The petitioner's rental property which generates \$900 of income each month is exempt as an income-producing business asset under Wis. Admin. Code §§ DHS 103.06(5)(b) and 103.06(13)(b).

THEREFORE, it is

ORDERED

That if, and only if, this proposed decision is adopted by the Secretary in a final decision, then the agency shall review and re-determine the petitioner's eligibility for Institutional – Medicaid retroactive to June 1, 2024, treating the rental property as exempt and certifying her for all Medicaid to which she is otherwise eligible, if any, with written notice. These actions shall be completed within 10 days of the date of the final decision.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH. If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as 'PARTIES IN INTEREST.'

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison,
Wisconsin, this 29th day of November, 2024



Kate J. Schilling
Administrative Law Judge
Division of Hearings and Appeals