



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

DECISION

[REDACTED]

MRA-20/#20606

PRELIMINARY RECITALS

Pursuant to a petition filed January 15, 1998 under §49.45(5), Wis. Stats., to review a decision by the Fond du Lac County Dept. of Social Services regarding Medical Assistance (MA), a hearing was held on March 17, 1998 at Fond du Lac, Wisconsin. A hearing set for February 18, 1998 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner's spouse is a "community spouse" under Spousal Impoverishment rules when he resides in a nursing home by choice, with no MA coverage.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Atty. Steven R. Sorenson
P.O. Box 311
Ripon, WI 54971-0311

Wisconsin Dept. of Health and Family Services
Bureau of Health Care Financing
1 West Wilson Street, Room 230
P.O. Box 309
Madison, WI 53701-0309
By: Beverly Dix, ESS
Fond du Lac County Dept. of Social Services
P.O. Box 1196
Fond du Lac, WI 54936-1196

EXAMINER:

Brian C. Schneider, Attorney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN [REDACTED] CARES # [REDACTED]) is a nursing home resident of Fond du Lac County.

2. Petitioner has resided in a nursing facility for a long period of time. Her husband [REDACTED] initially lived in the family home. While he resided in the home, petitioner's MA eligibility and cost of care were determined under Spousal Impoverishment rules. The result was that petitioner had no cost of care liability because all income of the spouses was allocated to Mr. [REDACTED]
3. In September, 1997, Mr. [REDACTED] entered the same nursing home that petitioner resides in. On September 25, the county notified petitioner that she would have a cost of care liability of \$304 effective November 1, 1997. The \$304 was obtained by subtracting a \$40 person deduction from petitioner's monthly social security.
4. Mr. [REDACTED] left the nursing home in October. By a notice dated October 6, the county informed petitioner that she again was under Spousal Impoverishment and had no cost of care liability for November.
5. In November, Mr. [REDACTED] again entered the nursing home, and he remains there. He did so voluntarily solely because he wanted to be with his wife. He did not apply for MA. The county nevertheless again closed the Spousal Impoverishment eligibility, and by a notice dated November 18, 1997, the county informed petitioner that she would have a cost of care liability of \$304 effective December 1, 1997. The cost of care liability increased to \$312 effective January 1, 1998, when petitioner received an \$8 per month social security cost of living increase.

DISCUSSION

The primary issue in this case is whether [REDACTED] may be considered a "community spouse" under Spousal Impoverishment rules although he is residing in a nursing facility. The MA Handbook, at App. 23.2.1, defines "community spouse" as a person married to an institutionalized person and not an institutionalized person himself. An "institutionalized person" is someone who is in a nursing home or participates in community waivers. Id., App. 23.2.3. Therefore, since Mr. [REDACTED] resides in a nursing home, he is considered institutionalized, and he cannot be a community spouse. He thus is not entitled to Spousal Impoverishment benefits.

Both the Wisconsin Statute and the United States Code read similarly to the Handbook. Sec. 49.455(1)(d), Wis. Stats., reads as follows:

"Institutionalized spouse" means either an individual who is in a medical institution or nursing facility and is married to an individual who is not in a medical institution or nursing facility or an individual who receives services under a waiver under 42 U.S.C. § 1396n (c) or (d) and is married to an individual who is not in a medical institution or nursing facility and does not receive services under a waiver under 42 U.S.C. § 1396n (c) or (d).

Read carefully, the statute describes two identifying characteristics for an individual to be considered an institutionalized spouse for Spousal Impoverishment purposes, either (1) an individual who is in an institution and who is married to an individual who is not in an institution, or (2) an individual who receives MA waiver services and who is married to an individual who is not in an institution and does not receive MA waiver services.

Petitioner is not an institutionalized spouse for Spousal Impoverishment purposes under that two-part definition. She is in a nursing facility and so is her spouse. Reversing the equation, Mr. [REDACTED] is in an institution and so is his spouse. Since both spouses are considered institutionalized, they cannot fall within the scope of Spousal Impoverishment.

42 U.S.C. 1396r-5(h)(1) defines "institutionalized spouse" as an individual who is in a medical institution or nursing facility, or who is described in section 1396a(a)(10)(A)(ii)(VI) [the MA waiver section], and who is married to a spouse who is not in an institution or nursing facility. Again, petitioner does not meet that definition because she is a nursing facility resident married to a person in a nursing facility.

I conclude that petitioner is not an "institutionalized spouse" as defined for Spousal Impoverishment purposes under sec. 49.455, Wis. Stats. Neither the state statute nor the federal code make it relevant whether the spouse is in a facility voluntarily or whether the spouse receives MA. The only issue is whether the spouses are "in" a nursing facility. The county thus correctly determined that petitioner has a monthly cost of care out of her monthly income, and that the monthly income cannot be allocated to her husband.

CONCLUSIONS OF LAW

Because both petitioner and her husband reside in a nursing facility, the couple is not covered within the scope of Spousal Impoverishment.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, 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 must explain what mistake the examiner 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.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. 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 filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The appeal must be served on the Wisconsin Department of Health and Family Services, P.O. Box 7850, Madison, WI 53707-7850.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 30th day
of March, 1998.



Brian C. Schneider
Brian C. Schneider, Attorney
Division of Hearings and Appeals
0318/bcs

cc: Fond du Lac Co.
Susan Wood, DHFS