



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MGE - 215891

PRELIMINARY RECITALS

Pursuant to a petition filed on November 13, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Polk County Department of Social Services regarding Medical Assistance (MA), a hearing was held on December 11, 2024, by telephone.

The issue for determination is whether the agency should increase the spousal asset allowance.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Jennifer A. O'Neill
O'Neill Elder Law LLC
2424 Monetary Blvd, Suite 201
Hudson, WI 54016

Respondent:

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

By:

Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

John Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dunn County.
2. Petitioner resides in a nursing home. He entered the hospital on 5/18/22. He thereafter has resided at Plum City Care Center.

3. Petitioner has a community spouse, [REDACTED].
4. The agency determined the couple's assets at \$374,942.71 as of September 2024.
5. The agency calculated the community spouse asset share to be \$154,100.
6. Petitioner applied for long-term MA and was denied due to being over the asset limit.
7. Petitioner appealed seeking a change in the asset allocation and an increase to the spousal asset share.

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. MA Handbook, Appendix 18.4.1. All available assets owned by the couple are to be considered. Homestead property, one vehicle, and anything set aside for burial are exempt from the determination. The couple's total non-exempt assets then are compared to an "asset allowance" to determine eligibility.

The asset allowance for this couple was \$154,140. MA Handbook, App. 18.4.3, which is based upon Wis. Stat., §49.455(6)(b). \$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.

The MCAA established a "minimum monthly needs allowance" for the community spouse at a specified percentage of the federal poverty line. This amount is the amount of income considered necessary to maintain the community spouse in the community.

As an exception to this general asset limit, assets above the allowance may be retained as determined through the fair hearing process, if income-producing assets exceeding the asset limit are necessary to raise the community spouse's monthly income to the minimum monthly needs allowance. The minimum monthly maintenance needs allowance is \$3,406.66. See Handbook, App. 18.6.2.

Wis. Stat., §49.455(6)(b)3 explains this process, and subsection (8)(d) provides as follows:

If either spouse establishes at a fair hearing that the community spouse resource allowance determined under sub. (6)(b) without a fair hearing does not generate enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4)(c), the department shall establish an amount to be used under sub. (6)(b)3 that results in a community spouse resource allowance that generates enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4)(c).

Based upon the above, a hearing examiner can override the mandated asset allowance by determining assets in excess of the allowance are necessary to generate income up to the minimum monthly maintenance needs allowance for the community spouse. Therefore, the above provision has been

interpreted to grant a hearing examiner the authority to determine an applicant eligible for MA even if a spousal impoverishment application was initially denied based upon the fact the combined assets of the couple exceeded the spousal impoverishment asset limit.

The minimum monthly maintenance level is \$3,406.66. Total income was \$2,232.98. That amount is less than the minimum monthly maintenance level of \$3,406.66. Therefore, petitioner is entitled to have the community spouse asset allowance increased to \$249,035, which is the total of nonexempt assets as of October 1, 2024, the date on which petitioner seeks to begin eligibility.

CONCLUSIONS OF LAW

Petitioner's husband's monthly income needs require a reallocation of assets to her.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to increase the community spouse asset share to \$249,035 retroactive to October 1, 2024, and to re-determine petitioner's institutional MA eligibility based upon the increased allocation. The county shall do so within 10 days 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, 5th 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.

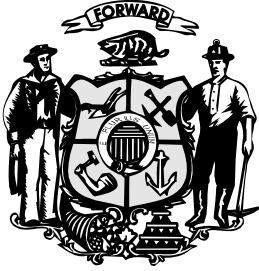
APPEAL TO COURT

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 4th day of February, 2025

\s _____
John Tedesco
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 February 4, 2025.

Polk County Department of Social Services
Division of Health Care Access and Accountability
Attorney Jennifer O'Neill