



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-10/59183

**PRELIMINARY RECITALS**

Pursuant to a petition filed July 31, 2003, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Clark County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on September 17, 2003, at Wisconsin Rapids, Wisconsin.

The issue for determination is whether the petitioner's IRA funds are a countable asset for determining petitioner's MA eligibility

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Mary Lawrence, ESS  
Clark County Dept Of Social Services  
Courthouse  
517 Court Street  
Neillsville, WI 54456-0190

**ADMINISTRATIVE LAW JUDGE:**

Joseph A. Nowick

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Clark County.
2. The petitioner was admitted to the Memorial Medical Center in Neillsville. She is married to (petitioner's spouse) who continues to reside in the community in Wood County.
3. On June 25, 2003, (petitioner's spouse) applied at the Clark County agency for institutional MA on behalf of the petitioner under spousal impoverishment rules. The county agency performed an assessment and calculated the countable assets of (petitioner) and (petitioner's spouse) to be

\$79,667, which included about \$37,907 in two Individual Retirement Accounts (IRA) of the petitioner.

4. The county agency sent a July 9, 2003 Notice of Decision to the petitioner stating that her application for Institutional MA had been denied due to countable assets exceeding the MA program asset eligibility limits. In this denial, the county agency had included her IRA funds as countable assets in determining petitioner's asset eligibility.
5. The petitioner is making annual withdrawals from each of her IRA accounts.

## DISCUSSION

The issue for determination is whether the IRA accounts owned by the petitioner are to be excluded in determining her MA eligibility under the spousal impoverishment guidelines. Prior to Keip v. DHFS, 2000 WI App 13 (Dec. 23, 1999), state law and policy mandated such an IRA be *included* in the asset determination. See Wis. Admin. Code §§ 103.06 & 103.075(5)(b)2.e. (January 1997).

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. See the Medicaid Eligibility Handbook, (hereafter, Handbook), Appendix 23.4.0. 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 are compared to the "asset allowance" to determine eligibility.

The current asset allowance for a couple, as here, with \$100,000 or less in total non-exempt assets, is \$50,000. See, Handbook, App. 23.4.2; see also, Wis. Stat. § 49.455(6)(b). \$2,000 (the MA asset limit for the institutionalized or community waivers program individual) is then added to the asset allowance to determine the asset limit under spousal impoverishment policy, i.e., here, \$52,000. If the couple's assets are at or below the determined asset limit, the "institutionalized" or "community waivers program" spouse is eligible for MA. If the assets exceed the above amount, as a general rule the applying spouse is not MA eligible.

In this case, the county agency worker was unclear as to whether to include the petitioner's IRA funds in the asset total. The county agency cited the following two provisions of the Handbook as being confusing:

### 11.7.21 Retirement

Retirement benefits are work-related plans for providing Benefits income when employment ends (e.g., pension, disability, or retirement plans administered by an employer or union). Other examples are funds held in an individual retirement account (IRA) and plans for self-employed individuals, sometimes referred to as Keogh plans.

Treat as an asset all retirement funds that are available for withdrawal by a fiscal group member. Count the value of the individual retirement accounts (IRA), Keoghs, etc. after applying any penalty reduction for early withdrawal, (e.g. the amount the client would actually receive if they cashed it in). This does not include tax penalties.

Do not count retirement funds as an asset if s/he:

- Is an ineligible spouse in an EBD case, or
- Has to quit a job to get the retirement funds, or
- Is receiving periodic payments from the retirement fund (15.4.4). A periodic payment is any partial payment from a retirement account. Withdrawal of the full amount from any retirement account that has never had a withdrawal Benefits (cont.) made from it is not considered a partial payment.

#### 15.4.4 Retirement Benefits

Retirement benefits are work-related plans for providing income when employment ends (e.g., pension, disability, or retirement plans administered by an employer or union). Other examples are funds held in an individual retirement account (IRA) and plans for self-employed individuals, sometimes referred to as Keogh plans.

Count periodic payments received from an individual retirement account (IRA) or other retirement fund as income. The payments do not have to be equal in amount.

Once periodic payments are received, the retirement fund is no longer an available asset (11.7.21). A periodic payment is any partial payment from a retirement account. Withdrawal of the full amount from any retirement account that has never had a withdrawal made from it is not considered a partial payment.

The petitioner is withdrawing periodic payments from the IRA in the form of an annual payment. Thus, under the above provisions, the IRA accounts are exempt. This is consistent with the above-cited decision by the Court of Appeals in Keip, which held that pension funds, including an IRA may not be counted as a countable asset. Therefore, the petitioner's countable assets are below the asset limit. (See also MRA-40/43818.)

#### **CONCLUSIONS OF LAW**

1. The petitioner's IRA funds are not a countable asset for determining petitioner's MA eligibility.
2. The assets of the petitioner and her spouse are below the spousal impoverishment MA limits.
3. The county agency incorrectly denied petitioner's MA application due to excess assets.

**NOW, THEREFORE, it is**

**ORDERED**

That the matter is remanded to the Clark County agency with instruction to certify the petitioner as MA eligible retroactive to her date of application within 10 days of the date of this Decision.

#### **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 that 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).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

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 23rd day of  
September, 2003

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/s/Joseph A. Nowick  
Administrative Law Judge  
Division of Hearings and Appeals  
316/JAN