DHA-15 (R10/97)

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-12/62917

PRELIMINARY RECITALS

Pursuant to a petition filed April 16, 2004, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Crawford County Dept. of Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on May 27, 2004, at Prairie Du Chien, Wisconsin.

The issue for determination is whether the Community Spouse Resource Allowance (CSRA) must be increased to bring the community spouse's monthly income up to the Minimum Monthly Maintenance Needs Allowance (MMMNA).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:	Representative:
(petitioner)	Attorney Jack Kussmaul Kinney, Urban & Kussmaul 151 West Maple Street P.O. Box 528 Lancaster, WI 53813

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: Peggy Messerli, ESS
Crawford County Dept Of Human Services
111 W. Dunn Street
Prairie Du Chien, WI 53821

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is an 80 year old resident of Crawford County who is married to Mary Mink. See Exhibit 1.

2. The petitioner has been a resident of the Prairie Health Care Center since about March 12, 2004. On March 22, 2004, the petitioner's wife applied for institutional MA on behalf of her husband.

3. As of March, 2004, the community spouse received $324.00 per month in Social Security. The petitioner receives monthly Social Security benefits of $967.00.

4. The combined Social Security income of the petitioner and his wife is $1,291.00. See Exhibit 9.

5. As of March 1, 1993, petitioner and his wife sold their plumbing and heating business to their child, and received a promissory note in the total amount of $209,165.30. See Exhibits 5 & 4. That promissory note entitled petitioner to receive monthly payments of principal in the amount of $750 and interest payments in a declining amount as indicated on the 23-year amortization table of Exhibit 5. The promissory note had a value of $110,165.30 as of March 1, 2004. The March, 2004 interest payment was $554.58. See Exhibit 5.

6. As of March, 2004, the petitioner and his wife had total assets of $189,472.29 (including cash value of life insurance policies and remaining value of promissory note).

7. The cash value of three life insurance policies (Farm Bureau-$15,768.88; Principal Financial-$3,164.37; and Prudential-$18,003.86 (Don) is $36,937.11. See Exhibit 9.

8. The total income from all Social Security payments and about $550 in interest income is about $1,841.00. If the life insurance policies were surrendered and the $36,937.11 invested at 4%, it could create monthly income of about $123. See Exhibit 9.

9. The total income from all sources for petitioner and his wife is $1,841 + $123 = $1,964. See Exhibit 9.

10. The county agency sent an April 5, 2004 Notice of Decision to the petitioner stating that he was ineligible for Institutional MA due to assets above the $94,760.00 community spousal asset eligibility limits. See Exhibit 8.

11. There is no evidence in the record that petitioner has excess shelter allowance.

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).

The MCAA established a new "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. After the institutionalized spouse is found eligible, the community spouse may, however, prove through the fair hearing process that he or she has financial need above the "minimum monthly needs allowance" based upon exceptional circumstances resulting in financial duress. Wis. Stat. §49.455(4)(a).

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 MA 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 then are compared to the "asset allowance" to determine eligibility.

In its April 5, 2004 notice, the county determined that the current asset allowance for this couple is \$92,760.00 as the total countable assets of the couple was \$189,563.98. See the MA Handbook, App. 23.4.2, which is based upon Wis. Stat. §49.455(6)(b). The MA asset limit of \$2,000 (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.

As an exception to this general rule, 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 in this case is \$2,266.50; or, \$2,020.00 plus excess shelter allowance. This is known as the "Minimum Monthly Maintenance Needs Allowance" (MMMNA). Wis. Stat. §§ 49.455(4)(a)2. & (c) (2001-02); Wis. Admin. Code § HFS 103.075(6)(b)1. & (c)2. (February 2002); Medicaid Eligibility Handbook, Appendix (MEH) 23.6.0.Section A.

Many MA recipients who are nursing home residents are, like petitioner, married and have spouses who live in the community. In these cases, the law recognizes that requiring all of the recipient's income to be used to pay nursing home costs may leave the community spouse in poverty. In order to prevent the impoverishment of the community spouse, the law allows the community spouse to receive the lesser of the following as monthly income: There is no evidence in the record that the excess shelter allowance applies to this case.

Wis. Stat. §49.455(6)(b)3 explains this process, and subsection (8)(d) provides in its pertinent part 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, an administrative law judge 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.

Subsection (8)(d) quoted above includes a final sentence that requires the institutionalized spouse to make his or her income available to the community spouse before the assets are allocated. Therefore, the petitioner's \$967 in income is allocated to his community spouse. However, the combined Social Security income of the petitioner and his wife is only \$1,291.00 which is far below the MMMNA. Even with the interest income from the promissory note of \$554.58 as of March, 2004 and the possible investment income of $123 (4% of cash value of surrendered life insurance policies), that additional income only raises the community spouse's total income to $1,964.00, which is still below the MMMNA of $2,266.50. Accordingly, the income from the couple's total assets, plus (petitioner) income should be reallocated to the community spouse. Obviously, the petitioner's cost contribution share would be $0.

CONCLUSIONS OF LAW

All of the non-exempt assets of petitioner and his wife must be allocated to his wife to maximize her monthly income.

NOW, THEREFORE, it is **ORDERED**

That the matter is remanded to the county agency with instructions to increase the community spouse asset share to $189,472.29, and to determine petitioner's MA eligibility retroactive to his March 22, 2004 Institutional MA application, based upon the new community spouse asset allocation. The county shall do so 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 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 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 13th day of July, 2004

/sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals
128/GMW