



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
c/o Atty Carol J Wessels
2675 N Mayfair Rd Suite 420
Wauwatosa, WI 53226

DECISION

MRA/158565

PRELIMINARY RECITALS

Pursuant to a petition filed June 26, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Columbia County Health & Human Services in regard to Medical Assistance, a telephone hearing was held on August 11, 2014.

The issue for determination is whether the petitioner's Community Spouse Resource Allowance should be increased.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
c/o Atty Carol J Wessels
2675 N Mayfair Rd Suite 420
Wauwatosa, WI 53226

Petitioner's Representative:

Attorney Carol J. Wessels
2675 N Mayfair Road Suite 420
Wauwatosa, WI 53226-1305

Respondent:

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

By: Becky Wagner

Columbia County Health & Human Services
2652 Murphy Rd
PO Box 136
Portage, WI 53901

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Columbia County.

2. Petitioner applied for nursing home MA on April 28, 2014, with a three month backdating request. The county denied MA by a notice dated June 13, 2014.
3. Petitioner's monthly income is \$1,302.84; his wife receives \$477.00.
4. The couple had 212,075.53 in nonexempt assets in May, 2014. *See*, exhibit #2.
5. The amount necessary to purchase an annuity that would pay \$1,706.16 monthly ranges from \$187,473 to \$195,195.

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 community spouse asset allowance for this couple was \$106,037.76. 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 \$2,585. *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.

Petitioner noted that his total income is \$1,302.84, and his Community Waivers Basic Need Allowance is \$901. $\$1,302.84 - \$901 = \$401.84$. $\$401.84$ plus Petitioner's wife's income of \$477 is \$878.84. $\$2,585$ minus \$878.84 is a deficit of \$1,706.16. Petitioner presented uncontested testimony establishing that the amount necessary to purchase an annuity that would pay \$1,706.16 monthly ranges from \$187,473 to \$195,195.

Petitioner's assets are \$212,075.53, and the maximum allowable asset level under the standard formula is \$108,037.76. The difference between those figures is \$104,037.77. This amount is less than the amount necessary to allow petitioner's spouse to purchase an annuity that would raise her income. Therefore, petitioner is entitled to have the community spouse asset allowance increased to \$212,075.53, which is the total of nonexempt assets as of May 1, 2014, the date on which petitioner seeks to begin eligibility. See, Exhibit 2.

CONCLUSIONS OF LAW

Petitioner's wife's monthly income needs require a reallocation of assets to her, and consequently the community spouse resource allocation shall be increased to \$212,075.53.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to increase the community spouse resource allocation to \$212,075.53, retroactive to May 1, 2014, 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, 5005 University Avenue, Suite 201, 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.

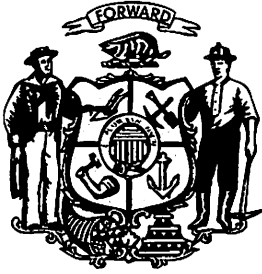
APPEAL TO COURT

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, Madison, Wisconsin 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 (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 22nd day of September, 2014.

\sPeter McCombs
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 September 22, 2014.

Columbia County Health & Human Services
Division of Health Care Access and Accountability
Attorney Carol Wessels