



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

DECISION

[REDACTED]  
c/o Attorney Molly Bandt  
Coalition of Wisconsin Aging Groups  
5900 Monona Drive Suite 400  
Madison, WI 53716-3554

MRA-9/41969

PRELIMINARY RECITALS

Pursuant to a petition filed October 28, 1999, under Wis. Stat. § 49.45(5), to review a decision by the Chippewa County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on November 18, 1999, at Chippewa Falls, Wisconsin.

The issue for determination is whether the petitioner may allocate his income to his wife under the spousal impoverishment rules.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
c/o Attorney Molly Bandt  
Coalition of Wisconsin Aging Groups  
5900 Monona Drive Suite 400  
Madison, WI 53716-3554

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: Cindy Tadayon  
Chippewa County Dept Of Social Services  
Economic Support Room 119  
711 North Bridge St  
Chippewa Falls WI 54729

**EXAMINER:**

Michael D. O'Brien, Attorney  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. The petitioner (SSN [REDACTED], CARES [REDACTED]) is a resident of Chippewa County.
2. The petitioner and his wife both formerly resided in the community. Mr. [REDACTED] then entered the nursing home on September 14, 1999. His wife became eligible for COP-Waiver benefits on July 28, 1999.
3. The county agency computed a "cost of care" liability for the petitioner of \$643 per month. This was derived by subtracting \$40 from his \$683 social security check, which is his entire monthly income.
4. The wife's monthly income is \$338.

### DISCUSSION

The petitioner is institutionalized and his wife receives medical assistance under the COP-Waiver portion of the program. The county agency denied the wife's request that she be allocated the petitioner's income because those receiving aid under COP-Waiver are considered institutionalized by the medical assistance program. The issue is whether she may be considered a "community spouse" under spousal impoverishment rules even though she is considered "institutionalized" under waiver rules. If she is a community spouse, the petitioner's entire income can be allocated to her to allow her to remain in the home. MA Handbook, Appendix 23.6.0.

The basis for the county's position is a policy in the *MA Handbook*, Appendix §23.2.1 that defines "community spouse" as a person married to an institutionalized person and not an institutionalized person herself. An "institutionalized person" is someone who is in a nursing home or participates in community waivers. *Id.*, 23.2.3. Since the wife is considered institutionalized, she cannot be a community spouse, and is therefore not entitled to spousal impoverishment benefits.

However, the Handbook conflicts with the relevant state and federal statutes. Specifically, Wis. Stat. §49.455(1)(d), declares:

"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).

This statute describes the two alternative standards which must be met for a person to be treated as an institutionalized spouse for spousal impoverishment purposes: (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.

The wife is not an institutionalized spouse under this statutory definition. She does not fit the first definition because she is not in an institution. She does not fit under the second definition because she is not married to a person who is not in an institution or receiving MA Waiver services.

The parallel federal statute, 42 U.S.C. 1396r-5(h)(1), defines "institutionalized spouse" as a person in a medical institution or nursing facility, or who is described in section 1396a(a)(10)(A)(ii)(VI) [the Waiver

section] and is married to a spouse who is not in an institution or nursing facility. As explained in the paragraph above, the wife does not fit this "institutionalized spouse" definition.

Finally, this issue has been decided in previous hearing decisions (including a Proposed/Final Decision from the Department Secretary), with the same result reached here. E.g., DHA Case No. MRA-70/21384 (Wis. Div. Hearings & Appeals March 30, 1998, by Examiner Schneider); Department Decision No. MRA-17/71495 (Office of Adm. Hearings September 5, 1992). Based on the foregoing, I conclude that the agency must treat the wife as a community spouse for purposes of application of spousal impoverishment rules.

### CONCLUSIONS OF LAW

Because the petitioner resides in a nursing facility, and his wife does not, spousal impoverishment rules apply to their MA case; this allows the wife to be treated as a community spouse in spite of her receipt of MA Waiver services.

NOW, THEREFORE, it is

### ORDERED

That this matter be remanded to the county agency with instructions to allocate the petitioner's income to his wife under the spousal impoverishment provisions. This action shall be taken 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.

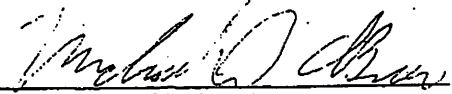
### APPEAL TO COURT

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 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 Eau  
Claire, Wisconsin, this 9th day of  
December, 1999.



Michael D. O'Brien, Attorney  
Division of Hearings and Appeals  
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cc: CHIPPEWA COUNTY DSS  
Susan Wood, DHFS

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