



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

MRA/170395

PRELIMINARY RECITALS

Pursuant to a petition filed November 30, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the St. Croix County Health & Human Services in regard to Medical Assistance, a hearing was held on January 13, 2016, at New Richmond, Wisconsin.

The issue for determination is whether the petitioner's assets exceed the medical assistance limit under the program's spousal impoverishment provisions.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Petitioner's Representative:

Attorney [Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: [Redacted]
St. Croix County Health & Human Services
1752 Dorset Lane
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of St. Croix County.
2. The petitioner lives in an assisted living facility. Her husband lives in their family home.

3. The petitioner applied for Family Care Medical Assistance on October 2, 2015. The county agency denied the application before November 30, 2015.
4. On October 2, 2015, the petitioner and her husband's total combined assets were \$132,606.32. Their assets include a house and related property in [REDACTED] valued at \$103,447. Neither the petitioner nor her husband operates this property on a day-to-day basis.
5. The petitioner and her husband listed the [REDACTED] property for sale with a real estate agent on February 1, 2016.

### DISCUSSION

The petitioner seeks medical assistance through the Family Care Program. Family Care, which is available through a federal waiver of regular medical assistance rules, provides appropriate long-term care medical assistance services for elderly or disabled adults. Wis. Stat. § 46.286; *see also* Wis. Admin. Code, Chapter DHS 10. The county agency contends that her assets exceed the program's limit.

As is true for regular medical assistance benefits, a person usually cannot have more than \$2,000 in assets and still be eligible for the program. But this asset limit can impose a severe hardship on the spouse of one seeking medical assistance. To alleviate this, the federal government and Wisconsin passed laws that allow a person considered institutionalized to allocate assets to her spouse who remains in the community. *See* Wis. Stat. § 49.455. A person who participates in a medical assistance waiver program such as Family Care is considered institutionalized. *Medicaid Eligibility Handbook*, § 18.1; Wis. Stat. § 46.286(6).

The amount of assets that can be assigned to the community spouse varies with the total amount of the couple's assets. Couples whose assets do not exceed \$100,000 can assign \$50,000 to the community spouse, those whose assets are over \$100,000 but less than \$238,440 can assign half of their assets, and those whose assets are \$238,440 or more can assign \$119,220. Stat. § 49.455(6)(b); *Medicaid Eligibility Handbook*, § 18.4.3. The \$2,000 an applicant can keep in her own name is added to this amount. Assets are determined on the earlier of the date on which a person began her first continuous period of institutionalization for at least 30 days or the date she requested a Home and Community-Based Waiver. *Medicaid Eligibility Handbook*, § 18.4.2. For example, if a couple had \$200,000 on the date one of them applied for Family Care, the person applying would become eligible when their combined assets fell to half of this amount plus \$2,000, or \$102,000.

The petitioner applied for Family Care Benefits on October 2, 2015. The agency eventually determined that her and her husband had \$132,606.32 in assets. This means that they could keep \$61,303.16 plus \$2,000, or \$63,303.16 and have the petitioner eligible for the program. They owned houses in both Wisconsin and [REDACTED]. The petitioner's husband lives in the Wisconsin property and they put the [REDACTED] one up for rent. The Wisconsin property does not count against the asset limit because it is considered homestead property. *Medicaid Eligibility Handbook*, § 18.4.1.1.

The assessed value of the [REDACTED] property is \$103,447. As a practical matter, the petitioner's eligibility depends upon whether this is a countable asset. If it was never countable, she is eligible because her and her husband's total assets were always below \$52,000; if it was initially countable and later not countable, her assets fell to well below \$63,303.16. Usually, to be exempt when determining spousal impoverishment eligibility, an asset must be one that would be exempt when determining elderly, blind, and disabled medical assistance eligibility. *Medicaid Eligibility Handbook*, § 18.4.1. Property that is not homestead property is excluded if it is used in trade or business and the applicant "is actively involved in the business operation on a day to day basis." Rental property is considered nonbusiness property. Under limited circumstances up to \$6,000 of the value of this type of asset is excluded. *Medicaid Eligibility Handbook*, § 16.9. The petitioner was not involved in the day-to-day operation of the [REDACTED] property.

This means that even if it meets the criteria for having a portion of it excluded, this amount will not exceed \$6,000, which is too little to affect her eligibility.

Non-homestead real property is also excluded if it is “listed for sale with a realtor at a price consistent with its fair market value.” *Id.* The petitioner presented evidence that she listed her [REDACTED] property for sale on February 1, 2016. This would make it exempt, which in turn most likely would reduce her assets enough to qualify for the Family Care Program. But the Division of Hearings and Appeals does not make ongoing eligibility decisions—that is the role of the various economic support units. The Division’s role is to determine whether those decisions were correct. Under the rules of the program, the petitioner was ineligible when the county unit determined her eligibility. Therefore, I must uphold its decision to deny Family Care Medical Assistance benefits to her.

I note that during the hearing there was a question concerning whether a person in an assisted living facility is considered institutionalized. I find no authority holding this. Rather, as noted in this decision, a person receiving Family Care is considered institutionalized. Once a person is eligible for Family Care, she can receive that program’s benefits, which often include help paying for assisted living.

**CONCLUSIONS OF LAW**

1. The petitioner’s property in [REDACTED] was an available asset when the agency denied her eligibility for medical assistance.
2. The county agency correctly determined that the petitioner was ineligible for Family Care Medical Assistance under the spousal impoverishment provisions of that program because her assets were too high.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal is dismissed.

**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 February, 2016

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\sMichael D. O'Brien  
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 22, 2016.

St. Croix County Health & Human Services  
Division of Health Care Access and Accountability  
Attorney [REDACTED]