



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION

MRA/143689

PRELIMINARY RECITALS

Pursuant to a petition filed September 07, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Polk County Department of Social Services in regard to Medical Assistance, a hearing was held on January 22, 2013, at Balsam Lake, Wisconsin. Hearings scheduled for October 23, 2012, and November 29, 2012, were rescheduled at the petitioner's request.

The issue for determination is whether the petitioner's spousal impoverishment asset limit can be raised in order to help the petitioner's spouse meet her minimum monthly needs.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Attorney Jennifer A. O'Neill
900 Crest View Drive Suite 220
Hudson, WI 54016

Respondent:

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

By:

Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Polk County.

2. The petitioner applied for medical assistance on July 31, 2012, seeking benefits retroactive to May 1, 2012.
3. The petitioner lives in a nursing home. His wife lives in the community.
4. The petitioner and his spouse had \$153,197.43 in countable assets when he entered the nursing home.
5. The petitioner and his spouse had a total income of \$1,565.93 when he applied for medical assistance. That amount has since increased to \$1,588.93.
6. The petitioner's spouse's shelter expenses are \$404 per month.
7. The petitioner's assets produce less than \$350 income per month.

DISCUSSION

Medical assistance rules require nursing home residents to “apply their available income toward the cost of their care.” Wis. Admin. Code § DHS 103.07(1)(d). However, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance, called the minimum monthly needs allowance, to the spouse of an institutionalized person so that she does not fall into poverty. See Wis. Stat. § 49.455, and 42 U.S.C. § 1396. This amount is the lesser of \$2,841 or \$2,521.67 plus an excess shelter allowance, which consists of any shelter expenses above \$756.50. *Medicaid Eligibility Handbook*, § 18.6.2. The petitioner's spouse has less than \$656.50 in shelter costs, so her minimum monthly needs allowance is \$2,521.67.

In addition to income, an institutionalized spouse can allocate assets to the community spouse. The law allows couples whose liquid assets are between \$100,000 and \$227,280 to assign half of the assets to the community spouse. Wis. Stat. § 49.455(6)(b); *Medicaid Eligibility Handbook*, § 18.4.3. The petitioner and his wife had \$153,197.43 in assets when he became institutionalized. An institutionalized person can keep up to an additional \$2,000 in assets and still maintain his eligibility for medical assistance. This means that the petitioner and his spouse can have \$76,589.72 (half of the total assets) plus \$2,000, or \$78,589.72, in liquid assets and still have one of them eligible for medical assistance.

If the community spouse's income falls short of her needs even after these allocations, she may request through a fair hearing that the asset limit be increased to produce more income. Wis. Stat. § 49.455(6)(b)3. The administrative law judge must assign sufficient assets to generate “enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance...” Wis. Stat. § 49.455(8)(d). Wisconsin law, in what is referred to as the income first rule, requires that the institutionalized spouse make all of his income, except for the sum equal to the \$45 personal needs allowance, available to the community spouse before the asset limit is increased. Wis. Stat. §§ 49.455(8)(d) and 49.45(7)(a). This provision was upheld in *Wisconsin Department of Health and Family Services v. Irene Blumer*, 534 U.S. 473, 122 S. Ct. 962 (2002), reversing and remanding *Blumer v. Wisconsin Department of Health and Family Services*, 237 Wis. 2d 810, 615 N.W.2d 647 (2000).

The petitioner and his wife have combined income of \$1,588.93, or \$977.74 less than they require for his personal needs and her minimum monthly needs. The petitioner submitted credible evidence showing that their assets, other than a \$75,000 account from which she draws on to meet her needs, produce \$136.39 per month. This means that to exceed the needs allowance, this account would have to produce over \$840 per month, which is not possible for any length of time except through fraud. I find that she does not have enough to meet her minimum monthly needs even with the income generated from all of the couple's assets. Therefore, the petitioner may allocate all of their assets to his wife. **The petitioner must transfer all of his assets so that they are titled solely in his wife's name within one year or the assets will count against his asset limit, which will leave him ineligible for medical assistance.**

I note that the county worker did not submit any documentation concerning how it calculated the petitioner's assets or eligibility, so I relied exclusively on that provided by the petitioner in writing this decision.

CONCLUSIONS OF LAW

The petitioner and his wife may allocate all of their assets to the wife because she requires all of those assets to produce enough income to meet her minimum monthly needs.

THEREFORE, it is ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it increase the community spouse's asset share to \$153,197.43. This action shall be retroactive to May 1, 2012.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge 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.

To ask for a rehearing, 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 for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 29th day of January, 2013

\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 January 29, 2013.

Polk County Department of Social Services
Division of Health Care Access and Accountability
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