



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
Atty John Koenig
[REDACTED]

DECISION

MRA/145749

PRELIMINARY RECITALS

Pursuant to a petition filed December 05, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Dane County Department of Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on February 20, 2013. At petitioner's request Hearings scheduled for January 29, 2013, and January 15, 2013 were rescheduled.

The issue for determination is whether, under the spousal impoverishment rules of the MA program, petitioner's *Community Spouse Resource Allowance* ["CSRA"] may be increased.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] [REDACTED] (not present at February
20, 2013 Hearing)

Atty John Koenig
[REDACTED]

Petitioner's Representative:

Attorney John F. Koenig
6041 Monona Drive Suite 100
Monona, WI 53716-3930

Respondent:

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

By: Eric Deml, ESS

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

OTHER PERSON PRESENT:

Douglas Ley, Law Student Intern, Kohls & Associates

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner is married and her husband lives in the community.
3. The total combined countable assets of petitioner and her husband as of October 25, 2012 were \$122,720.72; these total combined countable assets produce monthly income of \$626.38. Exhibit A.
4. Effective October 25, 2012 all of the countable assets of petitioner and her husband produce income except for \$500.00 in a checking account. Exhibit A.
5. The total monthly income of petitioner and her husband, excluding income generated by the total combined countable assets of petitioner and her husband, is \$1,417.00 per month consisting of \$429.00 per month of Social Security for petitioner and \$988.00 per month of Social Security for petitioner's husband. Exhibit A.
6. The Minimum Monthly Maintenance Needs Allowance ["MMM NA"] for petitioner's husband, without a Fair Hearing or Court Order, is at least \$2,521.67. Exhibit A.
7. Petitioner has made all of her income, except for an amount equal to the sum of her Personal Needs Allowance, any family allowances paid by petitioner, and amounts incurred as expenses for medical or remedial care for herself, available to her husband; petitioner has \$109.00 per month in medical or remedial care expenses for herself. Exhibit A.

DISCUSSION

Under the normal MA eligibility rules, a person is not eligible for MA unless they are first in poverty. If these rules applied to situations, such as petitioner's, where one spouse is in a nursing home and the other in the community, the community spouse would be forced into poverty before the spouse in the nursing home would be eligible for MA. This is because married couples have a legal claim to the income and assets of one another.

To avoid forcing community spouses into poverty, persons, such as petitioner, who are residents of a nursing home and still have a spouse living in the community may apply for MA under special rules known as *Spousal Impoverishment* rules. These rules are designed to allow the community spouse to keep a certain portion of the married couple's assets and income. See, Wis. Stat. § 49.455 (2011-12); Wis. Admin. Code DHS § 103.075 (December 2008); *Medicaid Eligibility Handbook* ["MEH"] Chapter 18.

The amount of assets a community spouse is allowed to keep is called the *Community Spouse Resource Allowance* ["CSRA"] (also sometimes called the *Community Spouse Asset Share* ["CSAS"]). The CSRA

can be invested by the community spouse to generate income, which the community spouse can then use for living expenses. If the amount of income generated by the CSRA, combined with any other income the community spouse receives, does not rise to the level of a certain minimum monthly amount (known as the MMMNA), an increase in the CSRA may be requested by way of the Fair Hearing process. The purpose of increasing the CSRA is to give the community spouse a greater amount of assets to invest, thereby generating a greater amount of income, which can then be used by the community spouse for living expenses. In this case, petitioner has requested that the CSRA be increased by the Fair Hearing process. See, Wis. Stat. §§ 49.455(6)(b)(3) & (8)(d) (2011-12); Wis. Admin. Code §§ DHS 103.075(8)(a)5. & (8)(d) (December 2008); MEH 18.6.2.Section A1.

The CSRA can be increased if it is established at a Fair Hearing that the CSRA determined without a Fair Hearing does not generate enough income to raise the community spouse's income to the *Minimum Monthly Maintenance Needs Allowance* ["MMMNA"]. In such a case a CSRA will be established by the Fair Hearing process that generates enough income to raise the community spouse's income to the MMMNA. Wis. Stat. § 49.455(8)(d) (2011-12); Wis. Admin. Code § DHS 103.075(8)(d) (December 2008).

In this case, the MMMNA is at least \$2,521.67. MEH 18.6.2.Section A1. The total monthly income of petitioner and her husband, excluding income generated by the total combined countable assets of petitioner and her husband, is \$1,417.00. Petitioner is not required to make the following amount of her income available to her husband: an amount equal to the sum of her Personal Needs Allowance, any family allowances paid by her, and amounts incurred as expenses for medical or remedial care for herself. Wis. Stat. § 49.455(8)(d) (2011-12). Petitioner is allowed a \$45.00 per month Personal Needs Allowance. MEH 39.4.2.1. Petitioner has \$109.00 per month in medical or remedial care expenses for herself. There is no evidence in the record of this matter that petitioner pays any family allowances. Therefore, petitioner is required to make the following amount of the combined total monthly income of her and her husband (excluding income generated by their total combined countable assets) available to her husband: \$1,263.00 (\$1,417.00 - \$45.00 - \$109.00).

The total combined countable assets of petitioner and her husband as of October 25, 2012 (\$122,570.72) produce monthly income of \$626.38.

Thus, the total amount of monthly income available to petitioner's husband, including income generated by the total combined countable assets of petitioner and her husband, is \$1,889.38 (\$1,263.00 + \$626.38). Thus, even if all countable assets are assigned to the CSRA, the monthly income of petitioner's husband still will fall below the MMMNA of \$2,521.78. It is evident, therefore, that a CSRA determined without a Fair Hearing, or even with a Fair Hearing, could not generate enough income to raise petitioner's husband's income to the MMMNA. It is also evident that the CSRA must be increased so as to include, up to a maximum of \$122,720.72, all of the countable assets of petitioner and her husband. This will bring petitioner's husband as close as possible to the MMMNA, given the total countable assets that are available to petitioner and her husband.

CONCLUSIONS OF LAW

For the reasons discussed above, effective October 25, 2012 petitioner's CSRA may be increased to include all countable assets of petitioner and her husband, but only up to a maximum of \$122,720.72.

NOW, THEREFORE, it is

ORDERED

that this matter be REMANDED to the Dane County Department of Human Services ["County"] and that, within 10 days of the date of this *Decision*, the County redetermine petitioner's MA eligibility increasing petitioner's CSRA effective October 25, 2012 to include all countable assets of petitioner and her husband, but only up to a maximum of \$122,720.72.

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 20th day of March, 2013

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 20, 2013.

Dane County Department of Human Services
Division of Health Care Access and Accountability
jkoenig@kohlslaw.com
LKnipfer@kohlslaw.com