



FH

[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MRA/147111

PRELIMINARY RECITALS

Pursuant to a petition filed February 01, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Manitowoc County Department of Human Services in regard to Medical Assistance, a hearing was held on March 05, 2013, at Manitowoc, Wisconsin.

The issue for determination is whether the petitioner's spouse requires a reallocation of assets to him.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney John M. Cashman
903 Washington St
PO Box 1868
Manitowoc, WI 54221-1868

Respondent:

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

By: Laurie Barancyk

Manitowoc County Department of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County.
2. Petitioner applied for institutional MA on October 7, 2012. By a notice dated January 15, 2013, the county denied the application because assets were over the MA limit.

3. Petitioner's monthly income is \$746.00 social security. Her husband receives \$1,177.00 monthly social security (amounts are at time of application).
4. The couple reported \$102,850.04 in nonexempt assets in November, 2012.
5. Monthly income from the assets totaled \$69.04 in October, 2012.

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 asset allowance for this couple was \$51,445.02. 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 \$2,841. 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.

The minimum monthly maintenance level is \$2,841. Total income was \$1,923.00 social security plus interest income totaling \$69.04, for total income of \$1,992.04. That amount is less than the minimum monthly maintenance level of \$2,841. Therefore, petitioner is entitled to have the community spouse asset allowance increased to \$102,850.04, which is the total of nonexempt assets as of October 7, 2012, the date on which petitioner seeks to begin eligibility.

CONCLUSIONS OF LAW

Petitioner's husband's monthly income needs require a reallocation of assets to him.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to increase the community spouse asset share to \$102,850.04, retroactive to October 7, 2012, 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

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 10th day of April, 2013

\sJohn P. Tedesco
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 April 10, 2013.

Manitowoc County Department of Human Services
Division of Health Care Access and Accountability
cashman@rmcolaw.com