



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MRA/147944

PRELIMINARY RECITALS

Pursuant to a petition filed March 6, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Chippewa County Department of Human Services in regard to Medical Assistance, a hearing was held on April 16, 2013, at Chippewa Falls, Wisconsin.

The issue for determination is whether the petitioner qualifies for medical assistance under that program's spousal impoverishment provisions.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Peter Grosskopf
1324 West Clairemont Ave Suite 10
Eau Claire, WI 54701

Respondent:

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

By: Cindy Carlson

Chippewa County Department of Human Services
711 N. Bridge Street
Chippewa Falls, WI 54729-1877

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Chippewa County.
2. The petitioner applied for institutional medical assistance on December 31, 2012. The county agency denied that application on February 1, 2013.

3. The petitioner previously applied for institutional medical assistance in February 2012. At that time she had \$19,039.95 in various bank accounts and IRAs. She also had two parcels of land. These included a 1.78-acre parcel worth \$27,500. The other parcel was a 21.94-acre parcel that included a 2.2-acre parcel assessed at \$32,500. Extrapolating from the value of the 2.2-acre parcel, the agency determined that the entire parcel was worth over \$300,000. A March 9, 2012, appraisal determined that its actual value was \$89,000.
4. The petitioner sold the 1.78-acre parcel on May 3, 2012, receiving \$27,000 after subtracting her selling costs.
5. The 2.2 acre parcel was listed for sale for \$34,900 with [REDACTED] on December 19, 2012.
6. The value of the petitioner's remaining property is \$54,100.
7. On December 28, 2012, the petitioner designated \$13,686 and her spouse designated \$13,651 for funeral arrangements.

DISCUSSION

Generally a person cannot have more than \$2,000 in assets and still be eligible for medical assistance. However, in order to prevent the spouse of an institutionalized person from becoming impoverished, the institutionalized spouse can allocate assets to the spouse who remains in the community. *See* Wis. Stat. § 49.455. Those who receive medical assistance under one of the MA-Waiver programs are considered institutionalized. Wis. Stat. § 49.455(1)(d); *Medicaid Eligibility Handbook*, § 27.4.1. The amount that can be allocated depends upon the amount of assets the couple has when the agency performs an assessment; an assessment can occur on or after the first continuous period of institutionalization. After assessing the assets, the agency must provide a copy of the assessment to each spouse. Wis. Stat. § 49.455(5)(a)2.

The law currently allows couples whose liquid assets are between \$100,000 and \$227,280 to assign half of the assets to the community spouse. Those whose assets exceed \$227,280 can assign \$113,640 to the spouse in the community. Wis. Stat. § 49.455(6)(b); *Medicaid Eligibility Handbook*, § 18,4.3. The maximum allocation increases with inflation, and when the petitioner first sought an assessment in February 2012, it was \$109,560. Because the applicant can also have \$2,000 in assets, this amount is added to the total amount of assets that a couple could have and one would still be eligible for medical assistance.

The county agency determined that the petitioner had over \$300,000 in countable assets when it performed the assessment in February 2012, meaning that her total household assets had to be \$111,560 or less for her to be eligible. There is no question that the assets were well below this by the time she next applied on December 31, 2012. Nevertheless, the agency found that she was ineligible because it incorrectly determined her assets in February. The major source of this error occurred because it determined that a 21.94-acre parcel of land she and her husband owned was worth over \$300,000. This parcel itself was not appraised before the agency made its decision. It contained a smaller 2.2-acre parcel worth \$32,500. The agency extrapolated the value of the larger parcel from that of the smaller one. However, although the entire parcel was 10 times as large as the 2.2-acre portion, its value was not. The entire parcel was later assessed at \$89,000. Although the agency's notice lists the petitioner's assets as of December 1, 2012, as \$310,377, it now contends that the \$89,000 figure should be used retroactively for the February 2012 assessment of her assets. The petitioner objects because she contends that although the assessment figure is obviously wrong, it cannot be challenged at this late date. Her logic is that if the agency notified her that it had undervalued her assets, she could not challenge that figure several months later. This is true, but their positions are not entirely equivalent. If the agency made an error in its favor the petitioner would have an incentive to challenge it within 90 days. When the agency makes an error against its own interest, no one has an incentive to challenge. Because the county agency was required to

provide a copy of the assessment to the petitioner, she should have realized it was clearly wrong. There is no principle of law that allows a party to be unjustly enriched. Still, what the agency seeks appears to be equitable relief, which I have no power to provide. Ultimately, it is unnecessary to decide what obligation the petitioner had to report the inflated assessment because even if the lower assessment figure is used retroactively, the petitioner will be eligible for medical assistance.

When the petitioner applied in February, her household's actual assets consisted of \$19,039.95 in various bank accounts and IRAs, the parcel of land worth \$89,000, and another parcel worth \$27,500, giving her total assets of \$135,539.95. Half of this is \$67,769.98, meaning that as long as her and her husband's assets did not exceed \$69,769.98, she would be eligible for medical assistance. She sold the \$27,500 parcel, and used much of it for her care. (There is no allegation or evidence that she divested any money.) In addition, she has listed 2.2 acres of the larger parcel for sale for \$34,900. Assets listed for sale with a real estate agent are exempt. *Medicaid Eligibility Handbook*, § 16.2.2. The county agency incorrectly assumed that the larger parcel was two separate parcels and valued the remaining real estate at the full \$89,000 appraised value of the entire parcel. The petitioner contends that the value of the remaining real estate is \$54,100, which it reached by subtracting the \$34,900 asking price from the \$89,000 value of the property. Her figure is closer to the true value of the remaining piece, but it would understate the land's value if the separated parcel sells for less than the asking price or the total value of a divided parcel is higher than it would be if it remained intact. The best practice would be to appraise the unlisted portion of the larger parcel. However, as will be seen, the countable assets are now far enough below \$69,769.98 that such an assessment is unnecessary.

In addition to the land, the petitioner and her husband had \$29,324.53 in various bank accounts and IRAs as of December 28, 2012. On that date, the petitioner designated \$13,686 and her husband designated \$13,651 for funeral arrangements. Medical assistance policy found at *Medicaid Eligibility Handbook*, 18.4.1. allows those seeking medical assistance under the spousal impoverishment provisions to designate any reasonable amount for funeral expenses. Assuming the remaining land is worth \$54,100, this reduces their total countable assets to \$56,087.53 by December 28, 2012. This means that the land can be worth almost \$66,000, and the petitioner's household assets would still be less than the \$67,769.98 limit she must reach to be eligible.

Eligibility for medical assistance begins "on the date on which all eligibility requirements were met, but no earlier than the first day of the month 3 months prior to the month of application." Wis. Admin. Code § DHS 103.08(1). When retroactive benefits are requested, eligibility depends upon whether the assets exceeded the limit on the last day of the month. *Medicaid Eligibility Handbook*, § 2.8.2. Based upon this, the petitioner is eligible for benefits, regardless of what value is used for the larger parcel of land at that time of the asset assessment, as of December 1, 2012.

CONCLUSIONS OF LAW

The petitioner's assets have been within the amount needed to be eligible for medical assistance under the spousal impoverishment provisions of the program since December 2012.

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 find the petitioner eligible for medical assistance under the spousal impoverishment provisions of the program retroactive to December 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 1st day of May, 2013

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on May 1, 2013.

Chippewa County Department of Human Services
Division of Health Care Access and Accountability
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