



FH
[REDACTED]

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

In the Matter of

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

DECISION

MRA/149218

PRELIMINARY RECITALS

Pursuant to a petition filed May 03, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the La Crosse County Department of Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on June 19, 2013.

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 June 19,
2013 Hearing)
c/o [REDACTED]
[REDACTED]
[REDACTED]

Represented by:

[REDACTED] [REDACTED], petitioner's wife
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Thomas Miller, ES Supervisor
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

OTHER PERSONS PRESENT:

Rhonda Endicott, Vernon County ESS
[REDACTED] [REDACTED], brother-in-law to petitioner's wife

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; age 72 years) is a resident of La Crosse County and resides in a nursing home.
2. Petitioner is married and his wife lives in the community.
3. The total combined countable assets of petitioner and his wife as of April 2013 were \$134,296.97; these total combined countable assets produce monthly income of an unknown amount.
4. The total monthly income of petitioner and his wife, excluding income generated by the total combined countable assets of petitioner and his wife, is \$1,362.00 per month consisting of \$626.00 per month of Social Security for petitioner, \$355.00 per month in veteran's benefits for petitioner, and \$381.00 per month of Social Security for petitioner's wife.
5. The Minimum Monthly Maintenance Needs Allowance ["MMMNA"] for petitioner's wife, without a Fair Hearing or Court Order, is at least \$2,521.67.

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 his wife, excluding income generated by the total combined countable assets of petitioner and his wife, is \$1,362.00. Petitioner is not required to make the following amount of his income available to his wife: an amount equal to the sum of his Personal Needs Allowance¹, any family allowances paid by him, and amounts incurred as expenses for medical or remedial care for himself. Wis. Stat. § 49.455(8)(d) (2011-12).

The total combined countable assets of petitioner and her husband as of April 2013 are \$134,296.97. However, there is nothing in the record of this matter which shows what income, if any, is produced by that \$134,296.97. This makes it impossible to determine what amount of the \$134,296.97, if any, should be reallocated to the CSRA for petitioner's wife. As noted above, only the amount necessary to raise the income of petitioner's wife to the MMMNA can be reallocated to the CSRA.

In this case the MMMNA is at least \$2,521.67 and the total monthly income of petitioner and his wife, excluding income generated by their total combined countable assets, is \$1,362.00. Thus, the question here is: what portion of their combined assets must be reallocated in order to produce monthly income of \$1,159.67 [$2,521.67 - 1,362.00$] for petitioner's wife? The answer is very likely the entire \$134,296.97 -- but it is impossible to know for certain without convincing evidence of what income is produced by the \$134,296.97.

Petitioner may, if he wishes, start this process over and request another Hearing. At that Hearing he may present evidence showing what income is produced by the \$134,296.97.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner's CSRA may not be increased.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

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.

¹ Petitioner is allowed a \$45.00 per month Personal Needs Allowance. MEH 39.4.2.1.

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 27th day of June, 2013

\sSean P. Maloney
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 June 27, 2013.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability