



FH
[REDACTED]

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

In the Matter of

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

DECISION

MRA/149446

PRELIMINARY RECITALS

Pursuant to a petition filed May 15, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Green County Department of Human Services in regard to Medical Assistance, a hearing was held on June 19, 2013, at Monroe, Wisconsin. At the request of petitioner, the record was held open for one week for submission of additional evidence to DHA. Petitioner’s attorney timely submitted the new information and included a statement that: “I also wanted to clear up the record in that [REDACTED] [REDACTED] is the institutional spouse and her husband [REDACTED] [REDACTED] is the community spouse. I believe at the hearing I said just the opposite.”

The issues for determination are: a) whether the county agency correctly denied the petitioner’s March 26, 2013 Institutional MA application due to assets above the eligibility limit; and b) whether the Community Spouse Resource Allowance (CSRA) and income must be increased to bring the community spouse’s monthly income closer to the Minimum Monthly Maintenance Needs Allowance (MMMNA) as of December 7, 2012.

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

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Mark Nelson, ES Supervisor
Green County Department of Human Services
N3152 State Road 81
Monroe, WI 53566

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Green County who resides in a nursing home. The petitioner's husband, [REDACTED], is the community spouse who resides in a private residence.
2. On or about March 26, 2013, the petitioner's attorney applied on behalf of the petitioner for Institutional Medical Assistance (MA), and requested MA eligibility retroactive to December 7, 2012, when petitioner entered the nursing home.
3. During the MA application period, the petitioner received monthly Social security of \$744.00 and dividends of \$54.38. Her husband received monthly Social Security of \$957.00 and dividends of \$151.91 for total income of \$1,907.29.
4. The petitioner and his wife had investment assets of \$212,374.00 as of the March, 2013 MA application period which would raise the community's spouse's income by \$149.78 per month. With their other income from Finding of Fact #3 above, the combined total income would raise their total income to about \$2,057.07. (\$1,907.29 + \$149.78). As a result, the total income would not raise the community's spouse income to the "minimum monthly maintenance needs allowance" ("MMMNA") of \$2,521.67.
5. On May 15, 2013, the county agency issued a Notice of Decision to the petitioner informing her that petitioner's application for Institutional MA was denied due to assets in excess of program asset limits. The agency determined that petitioner and her husband had countable assets of about \$212,373.98, and this exceeded the asset limit.
6. The petitioner filed an appeal with the Division of Hearings & Appeals (DHA) on May 15, 2013, seeking to have an Administrative Law Judge (ALJ) re-allocate all of the couple's resources to the petitioner's community spouse during the period in question of petitioner's institutionalization in a nursing home as of December 7, 2012.
7. At all times between the March 26, 2013 Institutional MA application (including the requested backdating to December 7, 2012) through the May 15, 2013 denial notice date, the community spouse's income (and the couples total incomes combined) were less than the "minimum monthly maintenance needs allowance" ("MMMNA") of \$2,841.00 or \$2,521.67 plus excess shelter costs in each month.
8. During the June 19, 2013 hearing, the county agency was unable to provide any evidence to refute that all of the petitioner's income producing assets were needed by the community spouse to increase his income closer to the MMMNA of \$2,521.67.

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).

The MCAA established a new "minimum monthly maintenance needs allowance" ("MMMNA") 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. After the institutionalized spouse is found eligible, the community spouse may, however, prove through the fair hearing process that he or she has financial need above the "minimum monthly needs allowance" based upon exceptional circumstances resulting in financial duress. Wis. Stat. § 49.455(4)(a).

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. *Medicaid Eligibility Handbook*, Appendix § 18.4. 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 the "asset allowance" to determine eligibility.

The current asset allowance for this couple is one-half of their non-exempt assets. *Medicaid Eligibility Handbook*, Appendix § 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. At application, the petitioner was found not eligible due to assets in excess of this general limit.

As an exception to the general rule, the Community Spouse Asset Share may be increased through the fair hearing process if the assets generate income on a monthly basis and are necessary to raise the community spouse's income to the MMMNA. Wis. Stat. § 49.455(8)(d); Wis. Admin. Code § HFS 103.075(8)(c). Currently, the MMMNA is defined as the lesser of \$2,841.00 or \$2,521.67 plus excess shelter costs. *Medicaid Eligibility Handbook*, App. § 18.6. In this case, it has been determined that no excess shelter costs applies, and therefore the MMMNA is \$2,521.67.

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, an administrative law judge 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 an administrative law judge 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.

In this case, the petitioner's representative, Attorney John Koenig, generally presented a well-organized, convincing case that the petitioner should be eligible for an increased asset/income allocation with the exception of inaccurately stating that the community spouse was the petitioner when Mr. [REDACTED] was actually the community spouse. See Preliminary Recitals above. The petitioner's monthly maintenance needs allocation in the instant case would be at least \$2,521.67. The total income of petitioner and her husband during the period in question (petitioner's March, 2013 MA application period) did not reach that level in any month even including all of the income produced from the couple's income producing investment assets. Because the purpose of increasing the asset limit is to allow the petitioner's spouse to maintain a basic standard of living after the petitioner enters an institution, only resources that generate income can be reallocated to the community spouse and exempted from the asset limit. §49.455(8)(d), Stats.; *DHA Final Decisions No. MRA-70/15380 and No. MRA-68/48394*. The county did not dispute that the investment assets in question were income producing. The statute does not require a finding of hardship

for an asset reallocation, and thus the asset allocation should be increased so that Mr. [REDACTED]'s income may be maximized as of December 7, 2012 (with backdating of petitioner's March, 2013 MA application. The couple's investment income is only enough to raise the community spouse's income closer to the minimum monthly needs allowance even with the increase in income.

Based upon these facts I find that petitioner's spouse requires all of the household income and income generating assets to come closer to meeting his minimum monthly maintenance needs allowance. The petitioner was requesting reallocation of petitioner's assets to the petitioner's backdated MA application date of December 7, 2012. Accordingly, based upon the above, the Community Spouse Resource Allowance (CSRA) and income should be increased to bring the community spouse's monthly income closer to the Minimum Monthly Maintenance Needs Allowance (MMMNA) retroactive to December 7, 2012.

CONCLUSIONS OF LAW

1. The county agency incorrectly denied the petitioner's March 26, 2013 Institutional MA application due to assets above the eligibility limit.
2. All of the non-exempt assets and income of petitioner and her husband must be re-allocated to petitioner's husband to maximize his monthly income as the community spouse retroactive to December 7, 2012.

THEREFORE, it is

ORDERED

That the matter is remanded to the county agency with instructions to increase the community spouse's assets and income to include all non-exempt assets of petitioner and her husband, and to re-determine petitioner's Institutional MA eligibility for the period retroactive to December 7, 2012, based upon the new community spousal asset allocation and income. The county shall do so within 10 days of the date 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 5th day of August, 2013

\sGary M. Wolkstein
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 August 5, 2013.

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