



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
c/o Atty [Redacted]

DECISION

MGE/150076

PRELIMINARY RECITALS

Pursuant to a petition filed June 18, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Green County Department of Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on August 28, 2013. At petitioner's request a Hearing schedule for July 18, 2013 was rescheduled. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning the same petitioner: MQB-150078.

The issue for determination is whether the County was correct to count the Option Agreement entered into by petitioner and his wife as income, and also as an asset, when making an MA eligibility determination under the MA Spousal Impoverishment rules.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted] (not present at August 28, 2013 Hearing)
c/o Atty [Redacted]

Petitioner's Representative:

Attorney [Redacted]

Respondent:

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

OTHER PERSONS PRESENT:

[Redacted], petitioner's wife
[Redacted], petitioner's daughter

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

FINDINGS OF FACT

1. Petitioner (81 years old; CARES # [REDACTED]) is a resident of Green County.
2. Petitioner is married to GRS; petitioner resides in an institution (a nursing home) and GRS resides in the community. Exhibit #3 (¶¶ #1, #2, #3, #4, #10 & #11).
3. On May 1, 2013 petitioner applied with the County for MA.
4. Petitioner's owns approximately 97.47 acres of farmland ["Farmland"] which is titled in his name. Exhibits #1 & #2.
5. The Farmland is subject to an option to purchase entitled *Option Agreement* dated July 24, 2012; the *Option Agreement* was executed by GRS as the Power of Attorney ["POA"] for petitioner; it was not signed by petitioner personally; the terms of the *Option Agreement* provide that \$30,000.00 per year is to be paid to petitioner and GRS. Exhibits #2, #2(¶ #6) & #3(¶ #7).
6. By an *Assignment of Income* dated April 17, 2013 petitioner assigned all consideration paid as a result of the *Option Agreement* to GRS; the *Assignment of Income* was executed by GRS as POA for petitioner; it was not signed by petitioner personally; it was not signed by GRS in her capacity for herself. Exhibit #2.
7. By an *About Your Benefits* notice dated June 14, 2013 the County denied petitioner's May 1, 2013 application for MA because it determined that petitioner's income was over the MA program limit and also that petitioner's assets were over the MA program limit; in making this determination the County counted the *Option Agreement* as income and also as an asset.

DISCUSSION

This matter concerns petitioner's eligibility for MA. Residents of nursing homes who still have a spouse living in the community, like petitioner, may apply for MA under special rules known as *Spousal Impoverishment* rules which are found in state law. 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.

Petitioner argues that he receives no income from the *Option Agreement* and that the *Option Agreement* is not an asset to him -- apparently based on the *Assignment of Income*.

As to income: under *Spousal Impoverishment* rules, for eligibility purposes, income paid in the name of both spouses is considered to be available one-half to each spouse. Wis. Stat. § 49.455(3)(b)1.b. (2011-12); Wis. Admin. Code § DHS 103.075(6)3. (December 2008); MEH 18.5.1.1; See also, Wis. Stat. § 49.455(2) (2011-12). Thus, one-half the income from the *Option Agreement* must be considered to be available to petitioner. The *Assignment of Income* cannot change the requirements of state law.

The above rule does not apply to income other than income from a trust if the institutionalized spouse establishes, by a preponderance of the evidence, that the ownership interests in the income are otherwise. Wis. Stat. § 49.455(3)(a)3. (2011-12); Wis. Admin. Code § DHS 103.075(6)3. (December 2008). The *Spousal Impoverishment* rules, however, have specific provisions relating to the allocation of income from the institutionalized spouse to the community spouse. See, § 49.455(4)(a)2. (2011-12); Wis. Admin. Code § DHS 103.075(6)(b)1. (December 2008); MEH 18.3.2, 18.6. These rules cannot be bypassed by an *Assignment of Income* such the one at issue here. Allowing such a bypass would frustrate the intent of the legislature as expressed in the specific provisions of the *Spousal Impoverishment* rules relating to the allocation of income.

As to assets: the *Spousal Impoverishment* rules specifically provide that the total value of the ownership interest of the institutionalized spouse plus the ownership interest of the community spouse must be considered in making an eligibility determination. See, §§ 49.455(5)(a) & (b). (2011-12); Wis. Admin. Code § 103.075(5)(a)1. (December 2008); MEH 18.3.1, 18.4.1. Thus, the *Option Agreement* must be counted as an asset when determining petitioner's eligibility for MA under *Spousal Impoverishment* rules.

Finally, it is noted that the County argued that the *Option Agreement* is a land contract. See, Wis. Admin. Code § DHS 103.06(14) (December 2008); MEH 15.4.7. It may not be a land contract, as argued by petitioner's attorney -- but this does not mean that it does not provide income to petitioner or that it is not an asset that must be counted.

CONCLUSIONS OF LAW

For the reasons discussed above, the County was correct to count the *Option Agreement* entered into by petitioner and his wife as income, and also as an asset, when making an MA eligibility determination under the MA *Spousal Impoverishment* rules.

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.

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 30th day of September, 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 September 30, 2013.

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