



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION UPON REHEARING

MRA/150095

PRELIMINARY RECITALS

Pursuant to a petition filed June 19, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on July 31, 2013, at Milwaukee, Wisconsin.

A decision was issued on August 16, 2013. A second amended decision was issued on August 20, 2013, because of inconsistencies that appeared between an electronic copy of the August 16, 2013 decision and the hard, file copy of the August 16, 2013 decision.

On August 27, 2013, Petitioner's attorney filed a rehearing request.

On September 4, 2013, the rehearing request was granted.

The issue for determination is whether the agency has correctly denied Petitioner's application for Medical Assistance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Petitioner's Representative:

Attorney Carol J. Wessels
[Redacted address]

Petitioner's Witness/Daughter: [Redacted name]

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

By: Brian Williams, Human Services Program Coordinator, Senior
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
 Mayumi M. Ishii
 Division of Hearings and Appeals

ALSO PRESENT:

██████████, Income Maintenance Worker

FINDINGS OF FACT

1. Petitioner (CARES # ██████████) is a resident of a nursing home in Milwaukee County. He began living at the nursing home sometime on or after March 12, 2013. (Exhibit 4, pg. 12) He has a spouse living in the community. (Id.)
2. On May 21, 2013, Petitioner's daughter signed an application for Institution Long Term Care Medicaid benefits on behalf of Petitioner. The agency received the application on May 24, 2013. (Exhibit 4, pgs. 11-23)
3. On June 14, 2013, the agency sent Petitioner a notice indicating that his application for Nursing Home Long Term Care had been denied because his assets were over the program limit. (Exhibit 4, pgs. 56-59)
4. Legal Assistant ██████████ filed a request for fair hearing on behalf of Petitioner that was received by the Division of Hearings and Appeals on June 19, 2013. (Exhibit 1)
5. Petitioner's countable gross monthly income is \$1951.30, \$1480.80 from Social Security and \$470.50 from a pension. (Exhibit 8, pg. 2; Exhibit 4, pg. 58)
6. Petitioner's spouse's total gross monthly income is \$523.80 from Social Security. (Exhibit 8, pg. 2).
7. Petitioner's medical remedial expenses are \$444 per month. (Exhibit 2)
8. Petitioner's "income-producing" assets were as follows (Exhibit 2):

Countable Asset	Value as of 7/31/2013	Monthly Income
IRA – Petitioner	\$87,280	\$406.35
Checking account	\$6514.94	\$0.09
Life Insurance –xx312M -Spouse	\$4252.50	\$14.50
Life Insurance –xxx169 -Petitioner	\$1939.14	\$6.61
MetLife Stock - Spouse	\$2272.64	\$4.00
MetLife Stock -Petitioner	\$2058.24	\$3.68
Wells Fargo Savings	\$3607.49	\$0.05
TOTALS	\$107,924.95	\$435.28

DISCUSSION

Petitioner filed a request for fair hearing, because his application for Medicaid Nursing Home Long Term care benefits was denied. In cases involving an application for Medicaid benefits, the applicant bears the burden of proof to establish that he or she meets eligibility criteria. Estate of Gonwa ex rel Gonwa v. Wisconsin Dept. of Health and Family Services, 265 Wis.2d 913, 668 N.W.2d 122, 2003 WI App. 152.

In the case at hand, there did not appear to be a dispute between the parties regarding the agency's calculation of Petitioner's assets as of May 2013, when Petitioner applied for benefits. At the time of application the agency determined the assets held by Petitioner and his spouse to be \$141,372.73. However, at the time of the hearing, Petitioner's calculation of their assets was \$107,924.25, a difference of \$33,447.78. Counsel for Petitioner indicated that Petitioner needed to liquidate a portion of his IRA to pay for his care at the nursing home.

Initial Determination of Asset Eligibility

Section 18.4.3 of the Medicaid Eligibility Handbook (MEH) describes how the CSAS is determined:

18.4.3 Calculate the CSAS

The community spouse asset share (CSAS) is the amount of countable assets greater than \$2,000 that the community spouse, the institutionalized person, or both, can possess at the time the institutionalized person applies for MA.

IF the total countable assets of the couple are:	Then the CSAS is:
\$227,280 or more	\$113,640
Less than \$227,280 but greater than \$100,000	½ of the total countable assets of the couple
\$100,000 or less	\$50,000

CARES will send each member of the couple a letter that states the couple's total countable assets, the CSAS, how much the institutionalized spouse must transfer to the community spouse, the date by which the transfer must be made, and the institutionalized person's asset limit.

Petitioner's assets, which at the time of application was \$141,372.73, fall between \$100,000 and \$227,280. As such, the CSAS would normally be half of \$141,372.73 or \$70,686.36. (At the time of the hearing, it would have been half of \$107,924.95 or \$53,962.47.)

Thus, to be eligible, Petitioner's assets would need to be below \$72,686.36 or \$55,962.47 depending on which date you count his assets. Petitioner's IRA, alone, puts him over either asset limit.

Petitioner asserts, however, that his spouse's minimum monthly maintenance needs are such that she needs the income generated from his income producing assets. Petitioner argues accordingly, that all of

his income producing assets should be allocated to his spouse. Petitioner further argues that he would then be asset eligible for Medicaid benefits.

The Spouse's Minimum Monthly Maintenance Needs Allowance

State and federal medical assistance laws contain provisions that allow an institutionalized person to allocate some of his income to his spouse so that she does not fall into poverty. *See Wis. Stat. § 49.455 and 42 U.S.C. §13964-5; also see MEH §§18.1 and 18.6.1.* This is called a Community Spouse Income Allocation or CSIA. (Id.)

Generally speaking, the Community Spouse Income Allocation is calculated by taking the Minimum Monthly Maintenance Needs Allowance (MMMNA) and subtracting from that amount, the Community Spouse's gross monthly income. *MEH §§18.1 and 18.6.1.*

The MMMNA currently is the **lesser** of \$2,841 or \$2,521.67 plus excess shelter costs. *MEH § 18.6.2.* Excess shelter costs are shelter costs above \$756.50. *Id.* Administrative law judges (ALJs) have the authority to increase the CSIA above the MMMNA when the MMMNA is insufficient to meet a particular community spouse's basic maintenance needs and when there exist "exceptional circumstances resulting in financial duress" for the community spouse. *Wis. Stat. §49.455(8)(c); Wis. Admin. Code §DHS 103.075(8)(c); MEH §18.6.* "Exceptional circumstances resulting in financial duress" means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs". *Wis. Admin. Code §DHS 103.075(8)(c); emphasis added.*

In Petitioner's case, the MMMNA is \$2,521.67, because there were no excess shelter expenses:

Per MEH §18.6.2 Petitioner's monthly shelter costs are:

\$275.22 Property Taxes
+ \$23.25 Homeowner's Insurance (\$279/12 – See Exhibit 7)
+ \$442.00 Standard Utility Allowance under the FoodShare program
<hr/>
\$740.47

Thus, Petitioner's excess shelter costs are:

\$740.47
-\$756.50

\$0

$\$2,521.67 + 0 \text{ excess shelter cost} = \$2,521.67 < \$2,841$

Petitioner's spouse essentially asked that her expenses be examined and that the CSIA be increased above the \$2,521.67 MMMNA. In her testimony, Petitioner's spouse listed the following expenses for herself:

1. Property Taxes - \$275.22 per month – Allowable and documented in the record
2. Homeowner's Insurance - \$23.25 per month - Allowable and documented in the record
3. Utilities – Petitioner's spouse did not state a specific amount, nor did she provide documentation of the amount of the expense. As such, it will not be allowed..

4. Auto Insurance - \$63.00 per month – Allowable and documented in the record
5. Health Insurance - \$251.00 – Allowable and documented in the record
6. Cell phone - \$56.03 per month

The testimony of Petitioner's spouse that her cell phone bill is \$56.03 per month is not consistent with information from her bank records. The bank records submitted by both parties indicated fluctuating cell phone bills for Verizon between about \$43.00 and \$47.00 per month, so \$47.00 per month will be allowed.

7. Food - \$500 per month

Petitioner's spouse claimed that she requires \$500 per month to pay for food, only for herself. However, Petitioner's spouse indicated that she does not require a special diet and her bank statements do not support a \$500 per month food expense. Petitioner's bank statements show grocery expenses closer to \$200 per month. As such, a reasonable allocation for the spouse's basic and necessary nutritional needs is \$200 per month, which is consistent with the maximum allotment allowed in the FoodShare program for an individual. *FoodShare Wisconsin Handbook §8.1.2*

8. Gas and Car maintenance

Given Petitioner's spouse's over estimation of her grocery and cell phone expenses, it is found that her testimony concerning the amounts of her expenses is not reliable. Petitioner's spouse provided no documentation to show how much is needed for gas and car maintenance. Consequently, the expense will not be allowed.

9. Personal Expenses - \$100.00 per month

As discussed above, Petitioner's spouse is not a good estimator of her own expenses. Petitioner's spouse did not state that there were any special personal items that she needed to meet her basic and necessary needs and she provided no documentation to support a \$100 per month expense for personal items. Consequently, the expense will not be allowed.

10. Home maintenance - \$500.00 per month

Petitioner's spouse needed to replace the roof, which cost \$16,723.00 to repair. (See Exhibit 8) This is \$1393.58 per month over 12 months. Because Petitioner's spouse entered into a contract for such services in April, 2013, and provided documentation of such, this expense will be allowed.

Petitioner's spouse indicated that she will also need to repair the foundation in the home. Estimates ranged between \$11,600 to \$25,489. Although documentation of the estimates was provided, no contract for services has been executed. As such, the expense will not be allowed at this time.

11. Snow removal - \$45.00 per service

Petitioner's spouse indicated that she needs to hire snow removal services when the snow fall is too heavy for her to shovel herself and that she pays about \$45.00 per service. As

discussed above, Petitioner's spouse's estimation of her expenses is not reliable and no documentation for snow removal expenses was provided. Consequently, the expense will not be allowed.

12. Lawn Care

Petitioner's spouse indicated that she cares for the lawn herself. There is no documentation of the exact expense, and Petitioner's spouse has demonstrated that she is not good at estimating her own expenses. As such, it will not be allowed.

13. Clothing \$100 per month

There is no documentation in the record to support a \$100 per month expense for clothing. Petitioner's claim that she must spend \$1200 per year on clothing to meet her basic and necessary needs is simply not credible. Consequently, the expense will not be allowed.

14. Spouse's Medical Expenses \$200.00 per month

While the spouse's out of pocket medical expenses can be allowed, there was no documentation in the record to support the expense and as stated above, Petitioner's spouse demonstrated that she does not provide reliable estimations of her expenses. As such, it will not be allowed at this time.

Adding the foregoing allowable monthly expenses, we have:

Property Taxes	\$275.22
Homeowner's Insurance	\$23.25
Auto Insurance	\$63.00
Health Insurance	\$251.00
Cell phone	\$47.00
Food	\$200.00
Home maintenance	\$1393.58
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	\$2253.05

Thus, as of April 2013, Petitioner's spouse's monthly expenses are lower than the \$2,521.67 MMMNA standard. Thus, an increase in the MMMNA is not warranted.

Community Spouse Income Allocation

Petitioner's spouse's counted gross monthly income is \$523.80 from Social Security. Thus, the Community Spouse Income Allocation calculation works out to be $\$2,521.67 - \$523.80 = \$1997.87$

Community Spouse Asset Share

Under *Wis. Stats.* §49.455(6)(b)3, assets above the community spouse asset share (CSAS) may be allocated to the community spouse 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. *Wis. Stats.* §49.455(6)(b)3 explains this process, and subsection (8)(d) provides in its pertinent part:

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 Medicaid 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.

Petitioner's counted gross monthly income is \$1951.30. The CSIA works out to be \$1997.87. As such, all of Petitioner's counted income, less a \$45.00 personal needs allowance and less \$444 in medical remedial expenses may be allocated to his spouse. However, this leaves a deficit of \$535.57 per month ($\$1951.30 - \$45.00 - \$444 = \1462.30 ; $\$1 - \$1462.30 = \$535.57$). See *MEH* §§18.6.2 and 18.6.4

Petitioner's non-exempt assets produce a total of \$435.28 per month in income. As such all of Petitioner's assets should be allocated to his community spouse to bring as close to the MMMNA as possible.

It should be noted that Petitioner asked for his benefits to be back dated to February 1, 2013. However, per *MEH* §2.8.1(7), the begin date for Institution Long Term Care Medicaid benefits, is the date the individual enters the nursing home and per *MEH* §2.8.2, back dating is only allowed for those months an individual would have been eligible, had he/she applied for benefits. According to Petitioner's application, he did not enter the nursing home until March 12, 2013. As such, he would not have been eligible for Institution Long Term Care Medicaid benefits in February 2013 and the earliest his benefits could begin is March 12, 2013, the date he entered the nursing home.

CONCLUSIONS OF LAW

- 1) The agency incorrectly denied Petitioner's request for Institution Long Term Care Medicaid Benefits.
- 2) The MMMNA does not need to be increased.
- 3) The CSAS of Petitioner's spouse may be increased to include Petitioner's IRA with FPN Financial Partners Network.
- 4) Petitioner's benefits may be back dated to March 12, 2013.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to increase Petitioner's community spouse's CSAS effective March 12, 2013, by allocating all of Petitioner's income producing assets to his community spouse.

The agency shall NOT increase the MMMNA from the statutorily proscribed amount.

The agency shall issue a new notice to Petitioner confirming eligibility effective March 12, 2013, if Petitioner is otherwise eligible for Institution Long Term Care Medicaid benefits.

The agency shall take all administrative steps necessary to complete these tasks within ten 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 Milwaukee,
Wisconsin, this 6th day of September, 2013.

\sMayumi M. Ishii
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 6, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability
cwessels@niwlaw.com