



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MRA/151876

PRELIMINARY RECITALS

Pursuant to a petition filed September 06, 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 in regard to Medical Assistance, a hearing was held on October 29, 2013, at Durand, Wisconsin.

The issue for determination is whether the petitioner can transfer additional assets to his spouse under the spousal impoverishment provision of the medical assistance program to ensure that her minimum monthly needs are met.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: Tom Miller

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [redacted]) is resides in a nursing home in Pepin County. His spouse resides in the community.

2. The petitioner applied for institutional medical assistance on June 25, 2013. The county agency denied his application on July 26, 2013, after determining that his assets exceeded the program's limit.
3. Each month the petitioner receives \$799 in social security and his wife receives \$319. Neither has any other income besides interest on investments.
4. The petitioner and his wife had the following assets when they applied for medical assistance:

a. Automobile:	\$25,000
b. House:	\$116,700
c. Life insurance:	\$1,000
d. Money market account:	\$52,358.94
e. Checking account:	\$5,126.11
f. Checking account:	\$4112.49
g. IRA:	\$15,255.69
h. Variable annuity:	\$19,524.68
i. Fixed annuity:	\$35,094.04
5. On July 18, 2013, the petitioner and his spouse each designated \$12,000 of their assets toward a prefunded funeral agreement.
6. The petitioner's two annuities produce a total of \$231.80 a month in income. The remaining assets, other than the house, automobile and life insurance policy, produce small amounts of income.

DISCUSSION

Medical assistance rules require nursing home residents to "apply their available income toward the cost of their care." Wis. Admin. Code § DHS 103.07(1)(d). However, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance, called the minimum monthly needs allowance, to the spouse of an institutionalized person so that she does not fall into poverty. *See* Wis. Stat. § 49.455, and 42 U.S.C. § 1396. This amount is the lesser of \$2,898 or \$2,585 plus an excess shelter allowance, which consists of any shelter expenses above \$775.50. *Medicaid Eligibility Handbook*, § 18.6.2. The petitioner's spouse has less than \$775.50 in shelter costs, so her minimum monthly needs allowance is \$2,585.

In addition to income, an institutionalized spouse can allocate assets to the community spouse. The law allows couples whose liquid assets are between \$100,000 and \$227,280 to assign half of the assets to the community spouse. Wis. Stat. § 49.455(6)(b); *Medicaid Eligibility Handbook*, § 18.4.3. The petitioner and his wife had \$127,871.95 in assets when he applied for medical assistance. An institutionalized person can keep up to an additional \$2,000 in assets and still maintain his eligibility for medical assistance. This means that the petitioner and his spouse can have \$63,985.93 (half of their total assets) plus \$2,000, or \$65,985.93, in liquid assets and still have one of them eligible for medical assistance. Homestead property, one motor vehicle, and assets designated for burial expenses are not counted toward these limits. *Medicaid Eligibility Handbook*, § 18.4.1.

If the community spouse's income falls short of her needs even after these allocations, she may request through a fair hearing that the asset limit be increased to produce more income. Wis. Stat. § 49.455(6)(b)3. The administrative law judge must assign sufficient assets to generate "enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance..." Wis. Stat. § 49.455(8)(d). Wisconsin law, in what is referred to as the income first rule, requires that the institutionalized spouse make all of his income, except for the sum equal to the \$45 personal needs allowance, available to the community spouse before the asset limit is increased. Wis. Stat. §§

49.455(8)(d) and 49.45(7)(a). This provision was upheld in *Wisconsin Department of Health and Family Services v. Irene Blumer*, 534 U.S. 473, 122 S. Ct. 962 (2002), reversing and remanding *Blumer v. Wisconsin Department of Health and Family Services*, 237 Wis. 2d 810, 615 N.W.2d 647 (2000).

The petitioner and his wife have combined income of \$1,118, or \$1,812 less than they require for his personal needs and her minimum monthly needs. The petitioner and his wife designated a total of \$24,000 of their assets for burial, reducing their the total assets from \$127,871.95 to \$103,871.95. They established at the hearing that they have two annuities worth \$54,618.72 that produce a total of \$231.80 a month in income. Protecting these asset reduces the total assets to less than the \$65,985.93 the couple can retain and have the petitioner be eligible for medical assistance. The remainder of their countable assets consists of two checking accounts, an IRA, a money market account, and a \$1,000 life insurance policy. Except for the life insurance policy, all of the remaining assets produce some income, but that income is undoubtedly less than the \$1,580.20 that would be needed for the petitioner's spouse to exceed her minimum monthly needs allowance. Therefore, I find that the petitioner may designate all of his assets to his wife and that he is eligible for medical assistance retroactive to June 1, 2013.

The petitioner must transfer all of his assets so that they are titled solely in his wife's name within one year or the assets will count against his asset limit, which will leave him ineligible for medical assistance.

I note that I appreciate the exceptionally well organized presentation by [REDACTED] [REDACTED] of the ADRC.

CONCLUSIONS OF LAW

The petitioner and his wife may allocate all of their assets to the wife because she requires all of those assets to produce enough income to meet her minimum monthly needs.

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 increase the community spouse's asset share to \$103,871.95. This action shall be retroactive to June 1, 2013.

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 18th day of November, 2013

\sMichael D. O'Brien
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 November 18, 2013.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability
judyb@co.pepin.wi.us