



FH
[REDACTED]

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

In the Matter of

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

DECISION

MGE/151952

PRELIMINARY RECITALS

Pursuant to a petition filed September 10, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on December 10, 2013, by telephone. A hearing set for November 5, 2013, was rescheduled at the petitioner's request. Also, the hearing record was held open for further clarifying submissions by the parties.

The issue for determination is whether the Department correctly denied the petitioner's Institutional/Long-Term Care MA application on July 25, 2013, due to excess assets.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
By: [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Eric Deml, ES Spec.

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. The petitioner applied for Institutional/Long-Term Care MA on May 21, 2013. This program has an asset test. She has a community spouse (spouse). Income and asset verification was requested in May, with most of the requested verification being supplied on June 20, 2013. A second verification request for the missing items was sent on June 11, 2013, and the missing verification was not timely supplied. The Department therefore issued a notice on June 21, 2013, denying the application for failure to supply all requested verification.
3. The needed verification was received shortly thereafter, and the Department calculated a Community Spouse Asset Share (CSAS) of \$164,356.29. This means that the petitioner and her husband must have assets at or under \$84,128.14 for her MA eligibility to begin. Because their assets exceeded \$84,128.14 at that time, the Department issued another written notice of denial to the petitioner on July 25, 2013.
4. The Department correctly computed the \$84,128.14 asset limit.
5. Assets that kept the petitioner above the \$84,128 asset limit in July 2013 included her two money market accounts (\$68,893), her checking account (\$2,995), and her spouse's CD (\$20,914). Also counted were cash value amounts from three life insurance policies: KC at \$1,971, Banker's Life at \$12,536, and NW at \$57,045. Their automobile, burial insurance, and the spouse's \$92,000 IRA were not counted, as they are exempt.
6. The petitioner contacted the Department on September 5, 2013, to report a change in some assets. However, the two money market accounts were still at \$68,893, and the spouse's CD remained at \$20,914. This kept the petitioner over the asset limit. The petitioner then filed this appeal.

DISCUSSION

"Spousal impoverishment" rules were created with passage of the federal Medicare Catastrophic Coverage Act of 1988 (MCCA), which included extensive changes in state Medicaid (MA) eligibility determinations in cases involving married persons. These rules also apply to the EBD Partnership Waiver, which is an MA Waiver program. *MEH*, §18.2.3. In spousal impoverishment cases, the institutionalized spouse resides in a nursing facility and "community spouse" refers to the person married to the institutionalized individual. Wis. Stat. §49.455(1). Generally, no income of a community spouse is considered to be available for use by the other spouse during any month in which that other spouse is institutionalized. Wis. Stat. § 49.455(3).

The MCCA created asset eligibility limits for spousal impoverishment households that are more generous than those for a non-spousal impoverishment household (*e.g.*, \$2,000 for a single person). The MCCA also established a MMMNA/income allowance for the community spouse at a specified percentage of the federal poverty line. This income allowance is the amount of monthly income deemed necessary for the community spouse to live on. In the instant case, the petitioner's husband is not arguing that he needs more than the MMMNA.

Establishing the Asset Limit in a Spousal Impoverishment Case

When initially determining whether an institutionalized spouse is MA eligible, county agencies review the combined assets of the institutionalized spouse and the community spouse. *MA Eligibility Handbook (MEH)*, 18.4.1, online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. All available assets owned by the couple are to be considered. Homestead property, one vehicle, and anything set aside for burial is exempt from the determination. The couple's total assets are then compared to the CSAS plus \$2,000 (*i.e.*, an asset limit) to determine eligibility.

MEH, 18.4.1 – 18.4.6, explains the asset eligibility determination process: First, a CSAS is calculated as follows: **(1)** If the couple's total countable assets are \$231,640 or more, the CSAS is \$115,980; **(2)** If the couple's total countable assets are less than \$231,640 but greater than \$100,000, the CSAS is 1/2 of the total countable assets of the couple; and **(3)** if the total countable assets of the couple are \$100,000 or less, the CSAS is \$50,000. Wis. Stat. § 49.455(6)(b)3.

Second, \$2,000 (the MA asset limit for the institutionalized individual) is then added to the CSAS to determine the total asset allowance for the couple. Generally, if the couple's assets are at or below the determined asset allowance, the institutionalized spouse is eligible for MA. If the assets exceed the asset allowance calculated for the couple, the institutionalized spouse is not MA eligible.

In this case, the couple's non-exempt assets at the time of application were \$164,356.29. Based upon an asset assessment, the amount of assets the couple would be allowed to retain would be \$84,128.14. Therefore, per the assessment, the petitioner and her community spouse exceeded the relevant asset limit at the time of the May 2013 application. Denial of that application was therefore correct. *The petitioner is free to file a new application at any time, if she believes that her assets have fallen under the \$84,128.14 amount.*

The petitioner questioned one aspect of the Department's calculation of non-exempt assets and the resulting asset limit. Specifically, she questioned the inclusion of the cash value of the Banker's Life insurance policy as an asset. Her spouse was under the impression that there was no cash value for that policy. The best evidence in the hearing record supports that agency's inclusion of a \$12,536 cash value for the Banker's Life policy. *See*, Exhibit 4, submitted post-hearing.

CONCLUSIONS OF LAW

1. The county agency correctly determined that the petitioner's spousal impoverishment-based asset limit is \$84,128.14.
2. The county agency correctly denied the petitioner's May 2013 Institutional MA application, due to excess assets.

THEREFORE, it is

ORDERED

That the petition is 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, Room 651, 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 21st day of January, 2014

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 22, 2014.

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