



FH
[REDACTED]

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

In the Matter of

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

DECISION

MGE/152585

PRELIMINARY RECITALS

Pursuant to a petition filed October 03, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on December 03, 2013, at Waupaca, Wisconsin.

The issue for determination is whether the county agency correctly discontinued the petitioner’s Medical Assistance (MA) for June and July, 2013, because her community spouse (husband) entered a nursing home on May 6, 2013, and thus was no longer a community spouse permitting asset eligibility under spousal impoverishment rules.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

Attorney [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Pamela Kolb, ESS
Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Waupaca County who died on July 27, 2013. See Exhibit 2. The petitioner's husband is [REDACTED].
2. The petitioner entered the [REDACTED] nursing home on April 4, 2013, and remained in that nursing home until her July 27, 2013 death.
3. Petitioner's husband was a "community spouse" under Spousal Impoverishment, until he entered a nursing home on May 6, 2013. See Exhibit 3. Mr. [REDACTED] has remained in that nursing home more than 30 consecutive days.
4. The petitioner's August 19, 2013 application for MA Long Term Care application was received at the county agency requesting backdating to April 1, 2013. See Exhibit 1.
5. The county agency sent a July 8, 2013 Notice of Decision to the petitioner stating that she was approved for MA Long Term Care benefits as of April 1, 2013 under spousal impoverishment rules of asset eligibility.
6. The county agency determined that petitioner was no longer eligible for MA as of June 1, 2013 because her husband was no longer a "community spouse" as of his May 6, 2013 entrance into a nursing home, and thus petitioner was evaluated as a single person regarding MA asset eligibility per Medical Eligibility Handbook, 18.2.1.
7. The county agency sent August 7, 2013 and September 16, 2013 Notices of Decision to the petitioner stating that her MA Long Term Care benefits was discontinued effective June 1, 2013, due to her assets of \$29,130.54 were above the MA asset limit of \$2,000 for a single person as her husband was no longer a community spouse under spousal impoverishment rules of asset eligibility.

DISCUSSION

The petitioner entered the nursing home on April 4, 2013 and remained in that nursing home until her July 27, 2013. The petitioner's MA Long Term application was approved as of April 1, 2013 based upon an April, 2013 asset assessment with her husband as a "community spouse" under Spousal Impoverishment asset eligibility limits. However, there was a change in circumstances when petitioner's husband himself entered a nursing home on May 6, 2013, and remained in the nursing home for more than 30 consecutive days.

During the December 3, 2013 hearing, the county representative presented a well-documented, convincing case that it correctly discontinued the petitioner's MA for the period of June 1, 2013 until petitioner's July 27, 2013 death. The basis for the discontinuance was because her husband was no longer a community spouse as of his May 6, 2013 entrance into a nursing home, and thus petitioner was evaluated as a single person regarding MA asset eligibility per Medical Eligibility Handbook, 18.2.1. The county agency sent August 7, 2013 and September 16, 2013 Notices of Decision to the petitioner stating that her MA Long Term Care benefits was discontinued effective June 1, 2013, due to her assets of \$29,130.54 were above the MA asset limit of \$2,000 for a single person (as her husband was no longer a community spouse under spousal impoverishment rules of asset eligibility).

During the hearing and in his November 25, 2013 brief, Attorney [REDACTED] argued questionably that once petitioner's husband was deemed to be a "community spouse" and once the April, 2013 asset assessment was completed, no change in circumstances would affect petitioner's asset eligibility until one year later, April, 2014. Attorney [REDACTED] was unable to provide any reliable, on point policy or law for such argument. Clearly, when there is a change in circumstances, the county agency may re-determine

eligibility when Spousal Impoverishment rules no longer apply to a recipient's asset or income eligibility. Mr. [REDACTED] attempted to analogize to an example in MEH 18.4.6.1, but such analogy was not relevant to the circumstances of this case. The petitioner's representative also appeared to be arguing that the denial of petitioner's MA as of June, 2013 was unfair to discontinue petitioners' MA after the asset assessment was completed. However, an Administrative Law Judge (ALJ), lacks the equitable powers to grant the relief sought. See Oneida County v. Converse, 180 Wis.2nd 120, 125, 508 N.W.2d 416 (1993). Beyond the legal allowances, petitioner's representative's argument is an equitable argument – a fairness argument- and I lack the equitable powers to grant the relief sought. See Oneida County v. Converse, 180 Wis.2nd 120, 125, 508 N.W.2d 416 (1993). The law is clear that a person with assets above the MA asset eligibility limits for a single person must be found ineligible for MA. Accordingly, based upon the above, I must conclude that the county agency correctly discontinued the petitioner's MA for June and July, 2013, because her community spouse (husband) entered a nursing home on May 6, 2013, and thus was no longer a community spouse permitting asset eligibility under spousal impoverishment rules.

CONCLUSIONS OF LAW

The county agency correctly discontinued the petitioner's MA for June and July, 2013, because her community spouse (husband) entered a nursing home on May 6, 2013, and thus was no longer a community spouse permitting asset eligibility under spousal impoverishment rules.

THEREFORE, it is

ORDERED

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, 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 16th day of January, 2014

\sGary M. Wolkstein
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 16, 2014.

Waupaca County Department of Social Services
Division of Health Care Access and Accountability
rwydeven@mccarty-law.com