



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/153211

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 30, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sauk County Department of Human Services in regard to Medical Assistance, a hearing was held on December 09, 2013, at Baraboo, Wisconsin.

The issue for determination is whether the petitioner established that an increase to the community-spouse resource allowance.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Julie Arendsee

Sauk County Department of Human Services  
505 Broadway, 4th Floor  
PO Box 29  
Baraboo, WI 53913

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Sauk County. Petitioner resides in [REDACTED]. Her husband, [REDACTED], resides in the adjacent assisted living facility.

2. Petitioner applied for MA on August 13, 2013.
3. Petitioner's application was denied on September 17, 2013 due to excess assets.
4. Petitioner's assets, shared with her husband are interest bearing in the amount of \$130,076.
5. Petitioner's community spouse collects income of \$895 in social security. The petitioner collects \$931 in social security.
6. The following expenses totaling \$3,800.12 and claimed by petitioner are basic and necessary expenses for the maintenance of the community spouse:

Rent	2,900
Minor Groceries	50
Toiletries/personal hygiene	10
Depends	300
Clothing	33
Life Insurance Policy	33
Medicare Part B Premium	104.90
Medicare part D Premium	44.10
Supplemental Insurance	325.12

### DISCUSSION

The federal Medicaid Catastrophic Coverage Act of 1988 (MCAA) included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat., §49.455(1).

When initially determining whether an institutionalized spouse is eligible for MA, county agencies are required to review the combined assets of the institutionalized spouse and the community spouse. MA Handbook, Appendix 18.4.1. All available assets owned by the couple are to be considered. Homestead property, one vehicle, and anything set aside for burial are exempt from the determination. The couple's total non-exempt assets then are compared to an "asset allowance" to determine eligibility.

The asset allowance for this couple was \$65,038. MA Handbook, App. 18.4.3, which is based upon Wis. Stat., §49.455(6)(b). \$2,000 (the MA asset limit for the institutionalized individual) is then added to the asset allowance to determine the asset limit under spousal impoverishment policy. If the couple's assets are at or below the determined asset limit, the institutionalized spouse is eligible for MA. If the assets exceed the above amount, as a general rule the spouse is not MA eligible.

The MCAA established a "minimum monthly needs allowance" for the community spouse at a specified percentage of the federal poverty line. This amount is the amount of income considered necessary to maintain the community spouse in the community.

As an exception to this general asset limit, assets above the allowance may be retained as determined 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. The minimum monthly maintenance needs allowance is \$2,898. See Handbook, App. 18.6.2.

Wis. Stat., §49.455(6)(b)3 explains this process, and subsection (8)(d) provides as follows:

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, a hearing examiner 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 a hearing examiner the authority to determine an applicant eligible for MA 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.

In this case, the petitioner's attorney presented a well-organized, convincing case that the petitioner should be eligible for an increased asset allocation. See Exhibit 1. The petitioner's monthly maintenance needs allocation in the instant case would be at least \$2,898.00. The total income of petitioner and her husband does not reach that level even including all of the income produced from the couple's income producing investment assets. Because the purpose of increasing the asset limit is to allow the petitioner's spouse to maintain a basic standard of living after the petitioner enters an institution, only resources that generate income can be reallocated to the community spouse and exempted from the asset limit. §49.455(8)(d), Stats.; *DHA Final Decisions No. MRA-70/15380 and No. MRA-68/48394*. The county did not dispute that the investments assets in question were income producing. The statute does not require a finding of hardship for an asset reallocation, and thus the asset allocation should be increased so that Mr. [REDACTED]'s income may be maximized retroactive to August 13, 2013 (one month prior to the May, 2010 MA application). The couple's investment income is only enough to somewhat raise the community spouse's income closer to the minimum monthly needs allowance even with the increase in income.

Based upon these facts I find that petitioner's community spouse requires all of the household income and income generating assets to come closer to meeting his minimum monthly maintenance needs allowance. The petitioner was requesting retroactive reallocation of petitioner's assets to August 13, 2013. Accordingly, based upon the above, the community Spouse Resource Allowance (CSRA) should be increased to bring the community spouse's monthly income closer to the Minimum Monthly Maintenance Needs Allowance (MMMNA) retroactive to that date.

### **CONCLUSIONS OF LAW**

That the husband requires a new allocation of assets.

**THEREFORE, it is**

**ORDERED**

That the matter is remanded to the county agency with instructions to increase the community spouse's assets to include all non-exempt income and assets of petitioner and her husband, and to re-determine petitioner's Institutional MA eligibility for the period retroactive to August 13, 2013, based upon the new community spousal allocation. The county shall do so within 10 days of the date 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, 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

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\sJohn P. Tedesco  
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 January 16, 2014.

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