



FH

[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MRA/153778

PRELIMINARY RECITALS

Pursuant to a petition filed November 26, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the [REDACTED] County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on January 13, 2014, at [REDACTED], Wisconsin. The record was held open for closing argument to be sent by each party to the Division of Hearings and Appeals (DHA). The parties timely submitted their arguments to DHA which are received into the hearing record.

The issue for determination is whether the county agency correctly denied the petitioner's August, 2013 Institutional MA application due to assets above the Spousal Impoverishment asset eligibility limits for petitioner and her community spouse.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Representative:

[REDACTED] [REDACTED], son and POA
[REDACTED]
[REDACTED]

Respondent:

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

By: Tammy Hammerschmidt, ESS

[REDACTED] County Department of Human Services
3733 Dewey Street
[REDACTED], WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of [REDACTED] County.
2. During 1993, the petitioner married [REDACTED] ([REDACTED]) F. [REDACTED] as a second marriage for both of them. There was a prenuptial (pre-marital) agreement which was signed by petitioner and [REDACTED] [REDACTED] on April 29, 1993. See Exhibit B.
3. As of about October 6, 2012, petitioner and [REDACTED] resided together at the [REDACTED] [REDACTED] [REDACTED].
4. Petitioner's son and POA, [REDACTED] [REDACTED], applied for MA on behalf of petitioner and that application was denied on January 14, 2013 due to failure to provide all required verifications.
5. [REDACTED] [REDACTED] re-applied for MA on behalf of petitioner on or about August 22, 2013. ESS Tammy Hammerschmidt met with Mr. [REDACTED] and [REDACTED]'s son and POA, [REDACTED] [REDACTED] questioning the assets of petitioner and [REDACTED] [REDACTED] as husband and wife.
6. On September 13, 2013, [REDACTED] [REDACTED] admitted his mother (petitioner) into the [REDACTED] Health and Rehabilitation Nursing [REDACTED]. The monthly cost is about \$8,757 plus medications and personal needs. See Exhibit C.
7. [REDACTED] [REDACTED] continues to reside in the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] at a monthly cost of about \$5,250.
8. The county agency completed an asset assessment, and determined the total countable assets for the couple as of October 7, 2013 were \$134,837.04. See Exhibits D and E. The county notified Mr. [REDACTED] that petitioner and her husband needed to spend down their assets to \$69,418.52 in order for petitioner to become asset eligible for Institutional MA benefits. See Exhibit E.
9. On October 28, 2013, the county agency received from petitioner's representative verifications of a small spend down of the total assets from \$134,837.04 to \$134,417.61. See Exhibit F.
10. The county agency sent a November 27, 2013 Notice of Decision to the petitioner stating that her August 22, 2013 MA application was denied due to assets above the asset eligibility limits under Spousal Impoverishment for petitioner and her community spouse (husband). See Exhibit F.
11. The petitioner's representative filed a November 26, 2013 appeal with the Division of Hearings and Appeals regarding that November 27, 2013 denial.

DISCUSSION

The Medicaid Eligibility Handbook provides in pertinent part:

Count the combined assets of the institutionalized person and his/her community spouse (**Note: Disregard prenuptial agreements.** They have no effect on spousal impoverishment "Spousal Impoverishment Protection" refers to special financial provisions in Medicaid law regarding income and assets that affect certain married couples receiving or applying for nursing home or community waiver services determinations). Add together all countable, available (See 16.1 Assets Introduction) assets the couple owns.
(Emphasis added).

Medicaid Eligibility Handbook, 18.4.1, Spousal Impoverishment Assets Introduction.

During the January 13, 2014 hearing and in his written submissions, petitioner's representative, [REDACTED], asserted that he and [REDACTED] [REDACTED] were attempting to uphold the terms of the 1993 prenuptial agreement, and thus requested that the county agency follow the terms of that pre-marital agreement. See Finding of Fact #2 above. Therefore, they requested that the county agency in its asset assessment and asset eligibility determinations allow [REDACTED] to retain his assets for his [REDACTED] expenses and his own care, and not require him to spend down his assets in order to make his wife (petitioner) asset eligible for Institutional MA. However, the county representative, ESS Tammy Hammerschmidt correctly responded that terms from prenuptial agreements are "disregarded" in determinations of the combined assets of the institutionalized spouse and the community spouse under Spousal Impoverishment pursuant to the Medicaid Eligibility Handbook, 18.4.1. As a result, the prenuptial agreement is not relevant to the county's determination of asset ineligibility of the petitioner in the November 27, 2013 Notice of Decision stating that petitioner's August 22, 2013 MA application was denied due to assets above the asset eligibility limits under Spousal Impoverishment. See Exhibit F.

Mr. [REDACTED] [REDACTED] and Mr. [REDACTED] [REDACTED] both attempted to argue that it was unfair to compel petitioner's husband to reduce his assets to make his wife MA eligible because the prenuptial agreement provided that both parties should support themselves if necessary. However, as explained above, prenuptial agreements are disregarded in Spousal Impoverishment asset cases. In any case, an Administrative Law Judge (ALJ), lacks the equitable powers to grant the relief sought. See Oneida County v. Converse, 180 Wis.2d 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.2d 120, 125, 508 N.W.2d 416 (1993). Accordingly, based upon the above, I must conclude that the county agency correctly denied the petitioner's August, 2013 Institutional MA application due to assets above the Spousal Impoverishment asset eligibility limits for petitioner and her community spouse.

CONCLUSIONS OF LAW

The county agency correctly denied the petitioner's August, 2013 Institutional MA application due to assets above the Spousal Impoverishment asset eligibility limits for petitioner and her community spouse.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby Dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 10th day of April, 2014

\sGary M. Wolkstein
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 April 10, 2014.

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