



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MRA/154183

PRELIMINARY RECITALS

Pursuant to a petition filed December 16, 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 January 23, 2014, at Black River Falls, Wisconsin.

The issue for determination is whether the petitioner's spousal impoverishment asset limit can be raised in order to help the petitioner's spouse meet his minimum monthly needs

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Attorney Amy J. Eddy
1257 Main Street
PO Box 228
Stevens Point, WI 54481-0228

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
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 a resident of Jackson County.

2. The petitioner applied for institutional medical assistance on October 29, 2013.
3. The petitioner and his spouse had \$120,678.57 in total countable assets on October 29, 2013. These assets produce \$55.94 in income each month.
4. The petitioner receives \$609 and her spouse receives \$1,648 in social security each month.

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 he 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 his 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 \$231,840 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 her husband had \$120,678.57 in assets when she became institutionalized. An institutionalized person can keep up to an additional \$2,000 in assets and still maintain her eligibility for medical assistance. This means that the petitioner and her spouse can have \$60,339.28 (half of the total assets) plus \$2,000, or \$62,339.28, in liquid assets and still have one of them eligible for medical assistance.

If the community spouse’s income falls short of his needs even after these allocations, he 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 her 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 her husband have combined income of \$2,257, or \$373 less than they require for her personal needs allowance and his minimum monthly needs. The parties agree that their assets produce another \$55.94 per month, which is still less than what the petitioner’s spouse needs to meet his minimum monthly needs. Because he does not have enough to meet his minimum monthly needs even with the income generated from all of the couple’s assets, the petitioner may allocate all of their assets to him. **The petitioner must transfer all of her assets so that they are titled solely in her husband’s name within one year or the assets will count against her asset limit, which will leave her ineligible for medical assistance.**

CONCLUSIONS OF LAW

The petitioner and her husband may allocate all of their assets to him because he requires all of those assets to produce enough income to meet his 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 \$120,678.57. This action shall be retroactive to October 29, 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, 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 28th day of January, 2014

\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 January 28, 2014.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability
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