



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



AMENDED DECISION

MRA/156228

PRELIMINARY RECITALS

Pursuant to a petition filed March 21, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on May 27, 2014, at Milwaukee, Wisconsin.

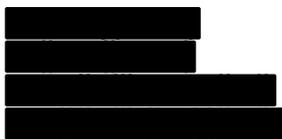
The issue for determination is whether there is a basis upon which to allocate Petitioner's assets to his community spouse.

NOTE: This Amended Decision is being issued to correct the analysis contained in the decision issued on June 3, 2014. Because the Petitioner was not first found eligible for Medicaid, the analysis concerning the Community Spouse Income Allocation should not have been included in the prior decision and the analysis should have been limited to whether the combined income of Petitioner and his spouse was sufficient to meet the minimum monthly maintenance needs allowance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Chris Sobczak, Human Services Program Coordinator
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In February 10, 2010, the Petitioner filed an application for Nursing Home Long Term Care Medicaid and to enroll in Family Care, another sub-program of the Medicaid program. (Exhibit 6, pg. 2)
3. On March 3, 2014, Milwaukee Enrollment Services (the agency) sent the Petitioner a notice indicating that his application for Family Care was denied because he was neither under age 19, a caretaker of a child under age 19, pregnant, disabled, over age 65 or blind. (Exhibit 7, pgs. 5-8)
4. March 10, 2014, the agency sent the Petitioner Information about Community Spouse Asset Share Calculation, indicating that the asset limit for his case was \$52,000 and that his spouse and he exceeded the asset limit. (Exhibit 7, pgs. 3 and 4)
5. Also on March 10, 2014, the agency sent the Petitioner a notice indicating that his application for Family Care benefits was denied because he was over the asset limit. (Exhibit 6, pgs. 2-6)
6. The Petitioner’s daughter and secondary Power of Attorney (POA) filed a request for fair hearing on his behalf. It was received by the Division of Hearings and Appeals on March 21, 2014. (Exhibit 1)
7. Petitioner has a community spouse. (Stipulation of the Parties; Testimony of the secondary POA and Petitioner’s wife)
8. Petitioner is over age 65. (Stipulation of the Parties; Exhibit 4, pg. 8)
9. The Petitioner has an individual retirement account that is worth \$42,437.59 and generates \$1,385.97 of income per year/ an average of \$115.50 per month. (Exhibit 5, pgs. 8-10)
10. The Petitioner has an annuity that is worth \$17,359.39 and that generates income of \$340.38 per year, or \$28.37 per month. (Exhibit 5, pg. 11)
11. The Petitioner also has a life insurance policy with a cash surrender value of \$16,328.27. (exhibit 5, pg. 12)
12. Petitioner’s spouse’s income is \$642.00 per month from Social Security. She has no other source of income. (Testimony of Petitioner’s secondary POA)
13. Petitioner’s income consists of \$320.00 from his pension and \$1818.00 from social security. (Exhibit 6, pg. 4)

DISCUSSION

Initial Determination of Asset Eligibility

Section 18.4.3 of the Medicaid Eligibility Handbook (MEH) describes how the CSAS is determined:

18.4.3 Calculate the CSAS

The community spouse asset share (CSAS) is the amount of countable assets greater than \$2,000 that the community spouse, the institutionalized person, or both, can possess at the time the institutionalized person applies for MA.

| | |
|--|-------------------|
| IF the total countable assets of the couple are: | Then the CSAS is: |
|--|-------------------|

| | |
|---|--|
| \$234,480 or more | \$117,240 |
| Less than \$234,480 but greater than \$100,000 | ½ of the total countable assets of the couple |
| \$100,000 or less | \$50,000 |

CARES will send each member of the couple a letter that states the couple's total countable assets, the CSAS, how much the institutionalized spouse must transfer to the community spouse, the date by which the transfer must be made, and the institutionalized person's asset limit.

In this case, the countable assets, which at the time of application totaled \$76,125.24, fell under the \$100,000 mark. As such, the CSAS would normally be \$50,000. The asset limit for the Medicaid applicant is \$2,000. *Medicaid Eligibility Handbook §39.4* Thus, to be eligible, the combined assets of Petitioner and his community spouse would need to be below \$52,000. Clearly, the combined assets exceed the \$52,000 limit.

However, it is asserted that Petitioner's spouse needs the income producing assets to meet her basic and necessary living expenses. As such, it is argued that Petitioner's income producing assets should be allocated to the community spouse.

The Spouse's Minimum Monthly Maintenance Allowance

State and federal medical assistance laws contain provisions that allow an institutionalized person to allocate some of his income to his spouse so that she does not fall into poverty. *See Wis. Stat. § 49.455 and 42 U.S.C. §13964-5; also see MEH §§18.1 and 18.6.1.* The Minimum Monthly Maintenance Needs Allowance (MMMNA) is the amount of income necessary prevent the impoverishment of the community spouse. *MEH §§18.1 and 18.6.1.*

The MMMNA currently is the **lesser** of \$2,898 or \$2,585 plus excess shelter costs. MEH § 18.6.2. Excess shelter costs are shelter costs above \$775.50. *Id.*

In Petitioner's case, the MMMNA is \$2,586.50:

Per MEH §18.6.2 Petitioner's monthly shelter costs are:

| |
|---|
| \$259.68 Property Taxes |
| + \$67.12 Homeowner's Insurance (\$279/12 – See Exhibit 7) |
| + \$450.00 Standard Utility Allowance under the FoodShare program |
| <hr/> |
| \$776.80 |

Thus, Petitioner's excess shelter costs are:

| |
|-----------|
| \$776.80 |
| -\$775.50 |
| ----- |
| \$1.30 |

\$2,585 + \$1.30 excess shelter cost = \$2,586.30 < \$2,898

Community Spouse Asset Share

Under *Wis. Stats.* §49.455(6)(b)3, assets above the community spouse asset share (CSAS) may be allocated to the community spouse 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 maintenance needs allowance (MMMNA). *Wis. Stats.* §49.455(6)(b)3 explains this process, and subsection (8)(d) provides in its pertinent part:

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, an Administrative Law Judge 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 an Administrative Law Judge the authority to determine an applicant eligible for Medicaid 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.

Petitioner's counted gross monthly income is \$2,138 (\$320.00 per month from his pension and \$1818 per month for social security). Petitioner's spouse has monthly income of \$642.00 per month from social security. Thus, their combined income totals \$2780. This is higher than the MMMNA of \$2586.30. As such, there is no basis upon which to allocate Petitioner's income producing assets to the Petitioner.

Petitioner's secondary POA argues that it is not fair that the asset limit is lower for her father than for the petitioners in cases MRA-145749 and MRA-147111 and submitted those decisions as part of Exhibit 4. However, in case MRA-145749, the asset limit was not stated in the decision; the only combined total of the countable assets. In case MRA-147111, the asset limit was determined to be \$51,445.02 (See page 2 of the decision), which is lower than the asset limit in this case. I note that in both cases, all available income fell short of the MMMNA, which is why the ALJs in those cases allocated the petitioners' assets to their community spouse.

This decision is not inconsistent with those prior decisions. Regrettably, in this case, the combined income of Petitioner and his wife are sufficient to meet the MMMNA, and so as stated above, there is no basis to allocate Petitioner's assets to his spouse.

In summary, Petitioner's assets totaled \$76,125.24 (\$42,437.50 from an IRA; \$17,359.39 from an annuity and \$16,328.27 from a life insurance policy). This exceeds the \$52,000 asset limit. Consequently, the agency correctly denied the Petitioner's application for Nursing Home Long-Term Care Medicaid benefits.

CONCLUSIONS OF LAW

There is no basis upon which to allocation Petitioner's assets to his community spouse.

The agency correctly denied the Petitioner's application for Nursing Home Long-Term Care Medicaid benefits.

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 Milwaukee,
Wisconsin, this 4th day of June, 2014.

\sMayumi M. Ishii
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 June 4, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability