



FH  
[REDACTED]

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

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In the Matter of

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

DECISION

MRA/159612

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 06, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Pepin County Department of Human Services in regard to Medical Assistance, a hearing was held on October 20, 2014, at Durand, Wisconsin.

The issue for determination is whether the petitioner's asset limit can be increased to provide income for his spouse.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Tom Miller

Pepin County Department of Human Services  
740 7th Avenue W.  
PO Box 39  
Durand, WI 54736-0039

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) was a resident of a nursing home Pepin County from April 10, 2014, until he died on June 30, 2014. His spouse lives in the community.

2. The petitioner applied for medical assistance on April 29, 2014.
3. The county agency determined that the petitioner and his wife had \$88,255.15 in countable assets on June 26, 2014.
4. Each month the petitioner received \$995 in social security payments and his wife received \$565. In addition, they each received \$221.02 in interest payments from their assets.

### 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). But 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 she 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. I cannot tell from the evidence, including documentation, what the petitioner’s spouse needs to meet her minimum monthly needs, but even \$2,585, the lowest amount, is more than their combined income, including income from their assets.

In addition to income, an institutionalized spouse can allocate assets to the community spouse. The law allows couples whose liquid assets are less \$100,000 to assign \$50,000 of the assets to the community spouse. Wis. Stat. § 49.455(6)(b); *Medicaid Eligibility Handbook*, § 18.4.3. The petitioner and his wife had \$88,255.15 in assets when he became institutionalized. An institutionalized person can keep up to an additional \$2,000 in assets and still maintain his eligibility for medical assistance. This means that the petitioner and his spouse can have \$52,000 in liquid assets and still have one of them eligible for medical assistance.

If the community spouse’s income falls short of her needs even after these allocations, she 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 his 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 received \$995 a month from social security and his wife receives \$565, or only \$1,560 between them. Their assets paid each of them another \$221.02 a month. Adding this to their social security income gives them a total of \$2,002.04 per month. Because even this is less than what his spouse needs to meet her minimum monthly needs, the petitioner may allocate all of their assets to his wife.

Although it should be obvious, this decision is retroactive and only applies from the time the petitioner entered the nursing home on April 10, 2014, until he died on June 30, 2014. Because he has died, there is no need to certify to the agency that his assets have been titled in his wife’s name.

### CONCLUSIONS OF LAW

The petitioner and his wife may allocate all of their assets to the wife because she requires all of those assets to produce enough income to meet her 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 \$88,255.15. This action and the petitioner's eligibility for institutional medical assistance shall be retroactive to April 10, 2014.

**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 14th day of November, 2014

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\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 November 14, 2014.

Pepin County Department of Human Services  
Division of Health Care Access and Accountability  
[judyb@co.pepin.wi.us](mailto:judyb@co.pepin.wi.us)