FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

REHEARING DECISION

MRA[redacted]

PRELIMINARY RECITALS

Pursuant to a petition filed November 18, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Richland County Health and Human Services in regard to Medical Assistance, a hearing was held on March 03, 2015, at Richland Center, Wisconsin. An initial decision was issued on March 12, 2015 dismissing the appeal. A request for rehearing was granted and this decision results.

The issue for determination is whether the agency erred in its denial of MA, and whether the CSRA and income allowance should be altered by the fair hearing process.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Petitioner's Representative:

Attorney Patricia McKinney-Lins
401 Charmany Dr, Ste 310
Madison, WI 53719

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Brianna Turk
Richland County Health and Human Services
221 W Seminary St.
PO Box 673
Richland Center, WI 53581

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #[redacted]) is a resident of Richland County.
2. Petitioner entered a nursing home on February 21, 2014.
3. Petitioner applied for nursing home MA in August 2014. Among the claimed assets was, and still is, a life insurance policy for petitioner with a cash value exceeding $20,000. The dividends from the policy are reinvested.
4. The application was denied due to excess assets.
5. Petitioner appealed to the DHA for a fair hearing to reallocate assets and income from the institutional spouse to the community spouse.
6. The ALJ dismissed the appeal on March 12, 2015 as petitioner remained over the asset limit.
7. Petitioner has now submitted documentation supporting her contention that assets have been reduced.

DISCUSSION

Under the normal MA eligibility rules, a person is not eligible for MA unless they are first in poverty. If these rules applied to situations, such as petitioner's, where one spouse is in a nursing home and the other in the community, the community spouse would be forced into poverty before the spouse in the nursing home would be eligible for MA. This is because married couples have a legal claim to the income and assets of one another.

To avoid forcing community spouses into poverty, persons, such as petitioner, who are residents of a nursing home and still have a spouse living in the community may apply for MA under special rules known as "Spousal Impoverishment" rules. These rules are designed to allow the community spouse to keep a certain portion of the married couple's assets and income. See, Wis. Stat. § 49.455; Wis. Admin. Code DHS § 103.075; *Medicaid Eligibility Handbook* ["MEH"] Chapter 18.

In the previous decision in this matter, I denied the requests to reallocate assets and income because petitioner remained ineligible for MA as he was over asset limits. Since the hearing and the clarity that often results from such an analysis of the facts, petitioner has taken actions to reduce assets. I could require that petitioner reapply for MA and then re-petitioner for the associated reallocation of assets and income. But, the administrative appeal process is not a hypertechnical process. It exists, in part, to more efficiently administer government benefit programs and ensure that eligible citizens in need are aided by such programs in a timely manner.

Based on the entirety of the record relating to expenses and available resources, it is clear that a reallocation of income generating assets to the community spouse is necessary. Similarly, an allocation of additional income from the institutionalized souse is appropriate. However, the effective date of those re-allocations cannot precede the date on which the assets were properly shifted to make petitioner eligible for MA. I recognize that petitioner wishes the effective date to be October 24, 2014. But, for the reasons set forth in the initial decision in this matter, that excessive assets were not income generating, petitioner was simply not eligible for MA. The effective date of the shifting of assets to income generating accounts and investments appears on this record to be March 31, 2015. There is no basis to make eligibility earlier than that. Such an order could only be based on equity. As an ALJ, I have no powers of equity and must apply the law and rules as they are written. Furthermore, even if I could do so, the delay in this case was no result of an action of the agency. While petitioner may not have understood his obligations or the many rules and interpretations relating to MA eligibility and impoverishment rules, such misunderstanding does not justify granting public benefits to a person who was legally and factually

not eligible. I hope the order in this matter brings some efficiency to the process for petitioner and his spouse.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner's request to increase the CSRA and income allowance is appropriate.

THEREFORE, it is **ORDERED**

That this matter is remanded to the agency with instruction to allocate all assets and income to the community spouse effective March 31, 2015 and find petitioner eligible for institutional MA effective April 1, 2015. These actions must be completed within 10 days.

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 1st day of May, 2015

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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 May 1, 2015.

Richland County Health and Human Services
Division of Health Care Access and Accountability
Attorney Patricia McKinney-Lins