



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MRA/162404

PRELIMINARY RECITALS

Pursuant to a petition filed December 02, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the St. Croix County Department of Human Services in regard to Medical Assistance, a hearing was held on January 13, 2015, at New Richmond, 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:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Jennifer A. O'Neill
900 Crest View Drive Suite 220
Hudson, WI 54016

Respondent:

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

By: Jen Feyereisen

St. Croix County Department of Human Services
1445 N. Fourth Street
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of a nursing home in St. Croix County. Her husband lives in the community.
2. The petitioner applied for institutional medical assistance on October 21, 2014.

3. The petitioner and her spouse had \$144,503.28 in total countable assets. These assets produce less than \$1,500 in income each month.
4. After paying Medicare Part B premiums, the petitioner's monthly income is \$288.96 and her husband's is \$545.88.

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 provide an 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, the minimum monthly needs allowance, is the lesser of \$2,980.50 or \$2,621.67 plus an excess shelter allowance, which consists of any shelter expenses above \$786.50. *Medicaid Eligibility Handbook*, § 18.6.2. The petitioner's spouse has less than \$786.50 in shelter costs, so his minimum monthly needs allowance is \$2,621.67.

Besides income, an institutionalized spouse can allocate assets to the community spouse. Couples with liquid assets between \$100,000 and \$238,444 may 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 \$144,503.28 in assets when she became institutionalized. An institutionalized person can keep up to another \$2,000 in assets and remain eligible for medical assistance. This means that the petitioner and her spouse can have \$72,256.64 (half of their total assets) plus \$2,000, or \$74,256.64, 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's combined countable income is \$545.88, or more than \$2,000 short of meeting his minimum monthly needs. Exactly how much income their assets produce is unclear, but it is well below the more than \$2,000 the petitioner's husband still requires to meet his minimum monthly needs. Because his and his wife's combined income does not to meet his minimum monthly needs even with the income generated from all of their assets, she may allocate all of their assets to him, and she can be eligible for medical assistance. **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.**

I note that I do not know when the petitioner entered the nursing home and thus cannot give a definitive date concerning when she became eligible for benefits. Therefore, I will order the agency to make those benefits retroactive to up to three months before her application, but no earlier than the first date she was considered institutionalized.

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. Depending upon when the petitioner entered the nursing home, this action shall take effect between July 1, 2014, and October 21, 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 4th day of February, 2015

\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 February 4, 2015.

St. Croix County Department of Human Services
Division of Health Care Access and Accountability
Attorney Jennifer O'Neill