



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FCP/165336

PRELIMINARY RECITALS

Pursuant to a petition filed April 8, 2015, under Wis. Admin. Code, §DHS 10.55, to review a decision by the La Crosse County Dept. of Human Services to discontinue the Community Waiver services, a hearing was held on May 6, 2015, by telephone.

The issue for determination is whether the agency correctly discontinued Community Waiver eligibility because petitioner's husband refuses to cooperate with the Spousal Impoverishment process.

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact
La Crosse County Dept. of Human Services
P.O. Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of La Crosse County.
2. Petitioner has been eligible for Community Waiver services for a number of years. Although she is married, she always was treated as a single individual for waiver purposes because her husband refused to cooperate with the application process.

3. In 2013 the Department changed its policy concerning Spousal Impoverishment eligibility. Beginning November, 2013, a community spouse is required to sign the application or renewal and cooperate with providing information on income and assets. Failure to do so results in waiver services being denied. For ongoing cases the policy was instituted at the next renewal.
4. In 2014 petitioner's husband committed an act of violence against her (petitioner testified that he tried to kill her), and a restraining order was imposed preventing him from having contact with petitioner. At petitioner's renewal in 2014 the agency did not impose the new policy concerning community spouse cooperation because of the restraining order.
5. Petitioner was scheduled to complete a renewal by the end of February, 2015. A notice was sent on February 16, 2015 informing her that eligibility would end March 1 if the renewal was not completed. Petitioner filed the renewal and it was processed on March 17. On March 18 the agency notified petitioner that her husband's signature was required as well as information about his income and assets.
6. Petitioner has had no contact with her husband since the violent act. The restraining order has expired, and petitioner cannot afford to file a renewal of the restraining order or for a divorce.
7. Petitioner husband again refused to cooperate. On April 7, 2015, the agency notified petitioner that her case was closed because she did not provide the required information concerning her husband.

DISCUSSION

The Community Waivers Programs are designed to enable elderly, blind and disabled persons to live in community settings rather than in state institutions or nursing homes. Such waivers allow the Medical Assistance (MA) Program to pay for community services that are not normally covered by the MA program. The waiver program runs according to the terms of a waiver that was granted to Wisconsin by the federal government. The waiver allows the Department to operate the program without following all of the rules that normally apply to MA. Wis. Stat., §46.277; see also 42 U.S.C.A. §1396n(c), 42 C.F.R. §435.217.

It is unclear which specific waiver program petitioner has been covered by, but for purposes of this decision the rules are the same for all waiver programs.

Wis. Stat., §49.455 is the Wisconsin codification of 42 U.S.C. s.13964-5 (MCCA). Among other things, the "spousal impoverishment" provisions at sec. 49.455 direct the Department to establish an income allowance for the community spouse of an institutionalized person. A person eligible for Community Waiver services is considered to be an "institutionalized person" for spousal impoverishment purposes. MA Handbook, Appendix 28.2.2.

Prior to November, 2013, the Department policy was that if a community spouse refused to sign the application, the institutionalized spouse was treated as if she were unmarried. See MA Handbook, App. 2.5.3 (09/09/09 release date). The Wisconsin legislature, in the 2013-2015 Biennial Budget, included a provision mandating that a community spouse must cooperate with the application process for the institutionalized spouse. The change was effective for all new applications, and for ongoing recipients at the next renewal. The change is codified in Wis. Stat., §49.455(5)(e). Now, if the community spouse refuses to cooperate, eligibility is denied.

The Department does provide an exception to the community spouse cooperate requirement at Appendix 2.5.3, if the denial of eligibility would result in undue hardship for the institutionalized spouse. Undue

Hardship is defined at Appendix 17.17 as deprivation of medical care such that the institutionalized spouse's health or life would be endangered.

I conclude that in this case the undue hardship rule should be applied. Petitioner's health is fragile enough that the care agency has continued to provide her care even after the waiver eligibility ended March 1. It is evident that this is not a situation where petitioner's husband is hiding assets and income; it was agreed by care staff and petitioner that he has no assets other than his vehicle and that his income is spotty. In addition, the county did not apply the new policy when the restraining order was effective, and it is acknowledged that the sole reason that the restraining order was not extended was due to petitioner's inability to utilize the court system for financial reasons. I thus will order the agency to restore petitioner's waiver eligibility back to March 1, 2015 based upon her being considered unmarried for benefit purposes.

CONCLUSIONS OF LAW

The signature and financial information of petitioner's husband should not be required for petitioner's Community Waiver eligibility because closing her case due to his refusal to cooperate would work an undue hardship on petitioner.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to restore petitioner's status as "unmarried" for Community Waiver processing purposes retroactive to March 1, 2015 due to the undue hardship closing her case would cause because of her husband's refusal to cooperate with petitioner's March, 2015 renewal, and to determine eligibility retroactive to that date. The county shall take the action within 10 days of this decision.

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.

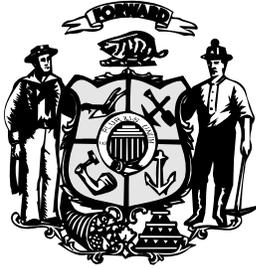
APPEAL TO COURT

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 11th day of May, 2015

\sBrian C. Schneider
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 11, 2015.

La Crosse County Department of Human Services
Office of Family Care Expansion