



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
[Redacted]
[Redacted]
Redact

DECISION

MRA/166000

PRELIMINARY RECITALS

Pursuant to a petition filed May 14, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the St. Croix County Health & Human Services in regard to Medical Assistance, a hearing was held on June 18, 2015, at New Richmond, Wisconsin.

The issue for determination is whether the county agency correctly determined the petitioner's spousal asset limit.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
[Redacted]
[Redacted]
Redact

Petitioner's Representative:

Attorney [Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: [Redacted]
St. Croix County Health & Human Services
1752 Dorset Lane
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 St. Croix County.
2. On February 4, 2015, the Division of Hearings and Appeals ordered that the petitioner's asset limit be increased from \$74,251.64 to \$120,678.57. DHA Decision No. MRA/162404.

3. *Decision No. MRA/162404* intended to raise the spousal asset share to \$144,503.28, which was all of their combined assets.

### DISCUSSION

The petitioner had been denied benefits under the Family Care program because her assets exceed the program's \$2,000 limit. In December 2014, she brought an action under the spousal impoverishment provision of the medical assistance program to allow her to transfer her assets into her husband's name so that they could hold onto their assets and provide enough additional income for him to meet his minimum monthly needs. *See Wis. Stat. § 49.455, and 42 U.S.C. § 1396.* At the time, their combined assets were \$144,503.28. As is clear from the following passages, the decision issued in February 2015 intended to grant the request and allow the petitioner's husband to count all of the assets as his:

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.

In addition, the Conclusions of Law stated: "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."

Nevertheless, because of a typographical error, the actual decision indicated that only \$120,678.57 could be protected. I will order that the asset amount be raised to the full \$144,503.28 retroactive to December 1, 2014. I note, however, that because Family Care benefits cannot be granted retroactively, that the petitioner may not be getting any benefits from the program until she is actually referred to it.

***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.***

### 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 \$144,503.28. This decision shall be made retroactive to December 1, 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 29th day of June, 2015

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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 June 29, 2015.

St. Croix County Health & Human Services  
Division of Health Care Access and Accountability  
Attorney Redact