



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

AMENDED DECISION

MRA/166451

PRELIMINARY RECITALS

Pursuant to a petition filed June 05, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on July 21, 2015, at Eau Claire, Wisconsin. This decision is amended to correct a typographical error in the order of the original decision. That error made the order effective retroactive to December 1, 2015. The correct date is December 1, 2014.

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 her minimum monthly needs.

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: Steve Tilbury

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.
2. Excluding their house, the petitioner and his wife have approximately \$328,000 in assets.
3. The petitioner and his wife's assets produce approximately \$700 of income per month.
4. The petitioner receives \$949 a month in social security and his wife receives \$390 a month from the program.
5. The petitioner entered a nursing home in October 2014.
6. The petitioner applied for medical assistance on April 3, 2015.

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 she 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 \$2,931 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 her minimum monthly needs allowance is \$2,621.67.

Besides income, an institutionalized spouse can allocate assets to the community spouse. Couples with at least \$238,440 in liquid assets may assign \$119,220 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 about \$328,000 when he entered the nursing home. (The testimony varied by a few thousand dollars concerning the difference, but this variance does not affect either the agency's or my decision.) An institutionalized person can keep up to another \$2,000 in assets and remain eligible for medical assistance. This means that the petitioner and his spouse can have \$121,220 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 and her husband receive a total of \$1,339 in social security, and their assets produce approximately \$700 per month, bringing their total income to \$2,039 per month. This means that even if they keep all of their assets, the petitioner's spouse's income will fall almost \$600 short of her \$2,621.67 minimum monthly needs. Based upon this, I find that the petitioner may allocate his assets to his spouse and he can be eligible for medical assistance.

The petitioner must transfer all of his assets except \$2,000 so that they are titled solely in his wife's name within one year or the assets will count against his asset limit, which will leave him ineligible for medical assistance.

CONCLUSIONS OF LAW

The petitioner and her husband may allocate all of their assets to her 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 \$328,000. This action shall be 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 5th day of August, 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 August 5, 2015.

Eau Claire County Department of Human Services
Division of Health Care Access and Accountability
Attorney Peter Grosskopf