



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed October 26, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Oconto County Department of Health And Human Services in regard to Medical Assistance (MA), a hearing was held on December 2, 2015, by telephone.

The issue for determination is whether the agency correctly denied an EBD MA application, due to excess assets.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Jonathan P. Barstow
2149 Velp Ave Suite 205
Green Bay, WI 54303

Respondent:

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

By: [REDACTED] ES Spec.

Oconto County Department of Health And Human Services
501 Park Avenue
Oconto, WI 54153-1612

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of a nursing home in Oconto County.

- [REDACTED]
2. The petitioner filed an Elderly/Blind/Disabled (EBD) MA application on August 28, 2015. Retroactive MA coverage was requested, going back to July 1, 2015. The petitioner has a community spouse.
 3. The agency issued written notice of denial of that application on September 29, 2015. The basis for denial was excess assets.
 4. The petitioner's spouse resides in his home, rendering it exempt. At the time of the August 2015 application, the petitioner had the following other assets:

Petitioner	IRA	\$35245.87
Petitioner	Checking acct	00.00
Petitioner	automobile (van)	(exempt)
Wife	Checking acct	00.00
Wife	Xmas club acct	56.30
Wife	Bank acct	12.73
Wife	automobile	<u>2612.00</u>
Total couple assets		\$ 37,926.90
 5. The agency worker believed that the petitioner could not have countable assets in his name exceeding \$2,000 at the time of application, hence the denial.
 6. The petitioner has not previously been certified for Institutional/Long-Term Care EBD MA.

DISCUSSION

Spousal impoverishment" rules were created with passage of the federal Medicare Catastrophic Coverage Act of 1988 (MCCA), which included extensive changes in state Medicaid (MA) eligibility determinations in cases involving married persons. In spousal impoverishment cases, the institutionalized spouse resides in a nursing facility and "community spouse" refers to the person married to the institutionalized individual. Wis. Stat. §49.455(1). Generally, no income of a community spouse is considered to be available for use by the other spouse during any month in which that other spouse is institutionalized. Wis. Stat. § 49.455(3).

The MCCA created *asset* eligibility limits for spousal impoverishment households that are more generous than those for a non-spousal impoverishment household (e.g., \$2,000 for a single person). The MCCA also established a MMMNA/*income* allowance for the community spouse at a specified percentage of the federal poverty line. This income allowance is the amount of monthly income deemed necessary for the community spouse to live on. This case involves only the asset limit.

When initially determining whether an institutionalized spouse is MA eligible, county agencies review the combined assets of the institutionalized spouse and the community spouse. *MA Eligibility Handbook (MEH)*, 18.4.1, online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. All available assets owned by the couple are to be considered. Homestead property, one vehicle, and anything set aside for burial is exempt from the determination. The couple's total assets are then compared to the *CSAS plus \$2,000* (i.e., an asset limit) to determine eligibility.

MEH, 18.4.1 – 18.4.6, explains the asset eligibility determination process: First, a CSAS is calculated as follows: **(1)** If the couple's total countable assets are \$238,440 or more, the CSAS is \$119,220; **(2)** If the couple's total countable assets are less than \$238,440 but greater than \$100,000, the CSAS is 1/2 of the total countable assets of the couple; and **(3)** if the total countable assets of the couple are \$100,000 or less, the CSAS is \$50,000. Wis. Stat. § 49.455(6)(b)3.

[REDACTED]

Second, \$2,000 (the MA asset limit for the institutionalized individual) is then added to the CSAS to determine the total asset allowance for the couple. If the couple's assets are at or below the determined asset allowance, the institutionalized spouse is eligible for MA. If the assets exceed the asset allowance calculated for the couple, the institutionalized spouse is not MA eligible. *MEH*, § 18.4.4.

The relevant state statute matches the *MEH*, using different language:

(5) RULES FOR TREATMENT OF RESOURCES; INELIGIBILITY.

...

(b) ... in determining the resources of an institutionalized spouse at the time of application for medical assistance, the amount of resources considered to be available to the institutionalized spouse equals the value of all of the resources held by either or both spouses minus the greatest of the amounts determined under sub. (6) (b) 1. to 4. [*i.e.*, \$50,000].

WIS. STAT. § 49.455(5)(B).

Applying the statute's language, the couple held non-exempt resources totaling \$37,926 at application, from which you subtract \$50,000 to arrive at "the amount of resources considered to be available to the institutionalized spouse." Starting with \$37,926, then subtracting \$50,000, leaves you with zero available to the institutionalized spouse at application.

In this case, the couple's non-exempt assets at the time of application were \$37,926 which is below \$50,000 plus \$2,000. Therefore, per the assessment, the petitioner and his community spouse did not exceed the relevant asset limit. The petitioner should have been found eligible, and then given one year to transfer assets in his name to his spouse. *MEH*, § 18.4.6.1, especially Example 2.

CONCLUSIONS OF LAW

1. The petitioner was asset eligible for EBD MA, under spousal impoverishment rules, at the time of application.
2. The agency erred in denying the petitioner's EBD MA application on the basis of excess assets.

THEREFORE, it is

ORDERED

That the petition is remanded to the agency with instructions to continue the processing of the petitioner's EBD MA application in accord with the Conclusions of Law above. This action shall be taken within 10 days of the date 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.

[REDACTED]

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 6th day of January, 2016

\sNancy J. Gagnon
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 January 6, 2016.

Oconto County Department of Health And Human Services
Division of Health Care Access and Accountability
Attorney Jonathan Barstow