



STATE OF WISCONSIN  
DEPARTMENT OF HEALTH & SOCIAL SERVICES

In the Matter of

DECISION

MRA-40/82859

P R E L I M I N A R Y   R E C I T A L S

Pursuant to a petition filed July 7, 1994, under sec. 49.45(5), Wis. Stats., to review a decision by the Milwaukee County Dept. of Social Services to deny a request for increase in a community spouse resource allowance, a hearing was held on August 16, 1994, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner is allowed to have assets in excess of the community spouse resource allowance in order to raise income to the level of the minimum monthly maintenance needs allowance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:      Petitioner:

Wisconsin Dept. of Health & Social Services  
Bureau of Welfare Initiatives  
1 W. Wilson St., Room 350  
P.O. Box 7851  
Madison, WI 53707-7851  
By: Pat Quezair, ESS  
Milwaukee County Dept. of Social Services  
1220 W. Vliet Street  
Milwaukee, WI 53205

EXAMINER:                      Kenneth P. Adler, Attorney  
Department of Health & Social Services

F I N D I N G S   O F   F A C T

1. The petitioner, whose social security number is \_\_\_\_\_, is a resident of Milwaukee County.

2. The petitioner applied for MA on June 20, 1994. At that time an asset assessment form was completed indicating the petitioner and his spouse had countable assets of \$167,561.17. Exhibit 1
3. On June 20, 1994 the county issued a notice of decision denying the petitioner's application. The notice indicated the petitioner's assets were \$37,625.29 above the allowable limit. Exhibit 2
4. At the time of application, the petitioner and his wife had the following nonexempt assets:

St. Camillus Patient Trust	101.56	3.0	.25
Park Bank Checking	937.86	1.5	1.17
Park Bank Checking	38,605.23	1.5	48.26
Park Bank CD	10,000.00	3.55	30.15
Tri-City Savings	4,898.65	2.66	10.86
American Skandia Annuity	103,996.63	3.03	262.59
Met. Life Insurance	<u>9,021.24</u>		<u>14.44</u>
<b>TOTALS</b>	<b>167,561.17</b>		<b>367.72</b>

5. The petitioner receives social security of \$877 per month. The petitioner's wife receives social security of \$404 per month.

Based upon the above, the monthly income available for the community spouse is as follows:

Wife's income	404.00
Allocation from husband (877-40 personal needs allowance)	837.00
Income generated by assets	<u>367.72</u>
<b>TOTAL</b>	<b>1,608.72</b>

#### D I S C U S S I O N

The federal Medicare Catastrophic Coverage Act of 1988 included extensive changes in State Medicaid eligibility determinations as they relate to spousal impoverishment where one spouse is a resident in a nursing home. The purpose of the new act was to protect a "community" spouse's assets and resources and designate how a spousal share would be computed. The Act also established a new minimum needs allowance for the community spouse at a specified percentage of the federal poverty line. Consequently the Wisconsin Legislature enacted sec. 49.455, Wis. Stats. in order to bring the Wisconsin Medicaid program into conformity with federal law.

Section 49.455 specifically states that the department is to use the criteria of that statutory section in determining the eligibility for medical assistance under secs. 49.46 or 49.47 Wis. Stats. and the required contribution toward the care of an institutionalized spouse.

"Community spouse" refers to the person who is married to an institutionalized individual. Sec. 49.455(1), Wis. Stats. As a general rule, no income of a spouse is considered to be available for use by the other spouse during any month in which that other spouse is an institutionalized spouse. Sec. 49.455(3), Wis. Stats. However, once an institutionalized spouse is determined to be eligible for MA, the income of that spouse may be allocated to the community spouse.

Section 49.455(8)(d) provides as follows:

If either spouse establishes at a fair hearing that the community spouse resource allowance determined under sub. (6)(b) without a fair hearing does not generate enough income to raise the community spouse's income to the minimum monthly needs allowance under sub. (4)(c), the department shall establish an amount to be used under sub. (6)(b)3 that results in a community spouse resource allowance that generates enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4)(c).

Section 49.455(4)(c) establishes the current minimum monthly needs allowance at \$1,816.50 per month. Section 49.455(6)(b) states as follows:

The community spouse resource allowance equals the amount by which the amount of resources otherwise available to the community spouse is exceeded by the greatest of the following: (1) [\$72,660]; . . . (3) The amount established at a fair hearing under sub. (8)(d).

The issue in this particular case is whether the petitioner may retain assets above the MA eligibility level (community spouse resource allowance - \$72,660) based upon the fact those assets do not generate enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance of \$1,816.50.

At hearing the petitioner presented information to establish that the couple must be allowed to retain assets above the community spouse resource allowance in order to generate income close to the minimum monthly maintenance needs allowance. Based upon that information, it is clear that additional assets are required to raise the monthly income to the minimum monthly maintenance needs allowance.

#### C O N C L U S I O N S   O F   L A W

1. That the petitioner and his spouse require assets in excess of the community spouse resource allowance in order to raise monthly income to the level of the minimum monthly maintenance needs allowance.
2. That the petitioner and his wife require 167,561.17 in assets in order to provide income equal to the minimum monthly maintenance needs allowance.

NOW, THEREFORE, it is

**O R D E R E D**

That the matter be remanded to the county agency with instructions to certify the petitioner eligible for MA based upon the determination assets above the maximum community spouse resource allowance are necessary in order to raise monthly income to the level of the minimum monthly maintenance needs allowance.

**REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to Office of Administrative Hearings, P. O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important. Or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

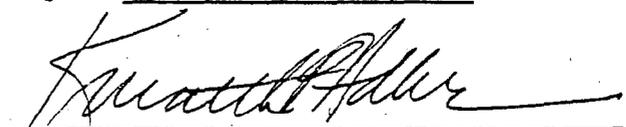
Your request for a new hearing must be received no later than 20 days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in Sec. 227.49 of the state statutes. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The appeal must be served on the Department of Health and Social Services as respondent, P. O. Box 7850, Madison, WI 53707-7850.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in Sec. 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this 20<sup>th</sup>  
day of SEPTEMBER, 1994.

  
Kenneth P. Adler, Attorney  
DEPARTMENT OF HEALTH & SOCIAL SERVICES  
8/25/94kpa

cc: Petitioner  
Milwaukee Co. DSS  
Atty.