DHA-15 (R10/97)

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

Badger Prairie Health Care Center
1100 East Verona Avenue
Verona, WI 53593

DECISION

MRA-13/46372

PRELIMINARY RECITALS

Pursuant to a petition filed October 11, 2000, under Wis. Stat. § 49.455(8)(a)5. (1997-98) and Wis. Admin. Code § HFS 103.075(8)(a)5 regarding determinations made under the spousal impoverishment rules of the Medical Assistance (MA) program, a hearing was held on November 15, 2000 in Madison, Wisconsin. The record was held open for 23 days (until December 8, 2000) for the submission of petitioner's closing argument and a reply by the county agency. The petitioner's closing argument was timely filed. No reply was received from the county agency.

A prior decision on petitioner's earlier spousal impoverishment asset allocation application (January 4, 2000) was held in regard to a similar issue of the petitioner in Case No. MRA-13/43721 (issued June 30, 2000 by ALJ Sean Maloney). See Exhibit 1. ALJ Maloney concluded that: 1) the Sauk County, Wisconsin home of petitioner and his wife is an exempt asset and cannot be counted for MA purposes; and 2) petitioner's request to increase the Community Spouse Resource Allowance was not ripe for decision and must be denied. Attorney Uphoff filed a rehearing request and that request was denied in a July 28, 2000 Rehearing Order of ALJ Maloney. Attorney Uphoff filed an August 25, 2000 Petition for Judicial Review with the Dane County Circuit Court (case was assigned to Judge Faust). See Exhibit 3. At this time, Judge Faust has not yet issued any decision.

The issues for determination are: a) whether the petitioner's institutional MA eligibility may be backdated for the months of April, May, and June, 2000; and b) whether under the spousal impoverishment rules of the MA program, the Community Spouse Resource Allowance (CSRA) may be increased for the three months of April, May, and June, 2000.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioners:	Represented by:
[redacted]	David S. Uphoff
	Lathrop & Clark LLP
Badger Prairie Health Care Center	740 Regent Street, Suite 400
1100 East Verona Avenue	P.O. Box 1507
Verona, WI 53593	Madison, Wisconsin 53701-1507

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street
Room 250
P.O. Box 309
Madison, Wisconsin 53707-0309
BY: Kathy Keller, ES Supervisor
DANE COUNTY DEPT OF HUMAN SERVICES
1819 ABERG AVENUE SUITE D
MADISON WI 53704

OTHER PERSONS PRESENT:
[redacted] petitioner's wife, guardian, and Power of Attorney
[redacted] petitioner's son
[redacted] petitioner's daughter

Gary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN [redacted] CARES # [redacted]) is a resident of Dane County and has resided at the Badger Prairie Health Care Center since about September, 1999. The petitioner is married to [redacted] who resides in the community.

2. Petitioner reapplied for spousal impoverishment MA on July 31, 2000. Petitioner requested backdating of MA eligibility to April 1, 2000.

3. The county agency completed an asset assessment for the couple for the months of April – July, 2000 and determined them to be over the MA asset limit. See Exhibit 2.

4. Petitioner has Social Security income of $639 per month. The community spouse has Social Security income of $279 per month. Total monthly income for the couple from Social Security benefits is $917.

5. After subtracting a personal needs allowance of $40 per month and a medical insurance premium of $252 per month, petitioner had available income of $387 per month to allocate to his wife. After such allocation, petitioner's wife has income of $625 ($238 plus $387), leaving [redacted] $1,218.33 per month below the $1,843.33 Minimum Monthly Maintenance Needs Allowance (MMMNA).

6. The county agency sent a September 1, 2000 Notice of Decision to the petitioner stating that petitioner's July 31, 2000 institutional MA application has been approved as of July 1, 2000 with zero patient responsibility. See Exhibit 4. This notice also indicated that the community spouse's gross monthly income was below the MMMNA of $1,843.33. See Exhibit 4, page 2.

7. The total combined assets of the couple were $103,767.70 for April, 2000; and $102,350.23 for May and June, 2000. See Exhibit 12. The amount of assets allowed to be retained by the community spouse (community spouse asset share) was determined to be $68,746.50 as of petitioner's August, 1999 institutionalization. As of April, 2000, petitioner's community spouse

had excess assets of approximately $35,000. Petitioner is allowed to retain $2,000 in assets. Exhibit 12.

8. The petitioner's non-exempt assets from the previous hearings (a 1931 Allis Chalmers farm tractor, life insurance policies, and Missouri real estate) became income producing as of April, 2000. See Exhibits 5 - 10.

9. The county agency did not establish that petitioner's Missouri property was a countable asset for MA eligibility purposes as of April 1, 2000. See Exhibits 6, 7, & 8.

10. If petitioner's wife's community spouse asset share were increased to include all nonexempt assets, she would still not receive the full MMMNA of $1,843.33.

DISCUSSION

The issue in this case concerns the MA eligibility of the petitioner based upon spousal impoverishment guidelines concerning both: (1) a couple's "asset allowance" referred to as the Community Spouse Asset Share (CSAS) and (2) the monthly income for the community spouse referred to as the "minimum monthly maintenance needs allowance". The question is whether an institutionalized individual initially determined ineligible for MA based upon assets exceeding the spousal impoverishment asset allowance may subsequently be found eligible through the fair hearing process if those assets are required to generate income for the community spouse to reach the minimum monthly needs allowance as established by statute.

The petitioner reapplied for spousal impoverishment MA on July 31, 2000. The petitioner did not dispute the asset amount but asserted the monthly income received by the couple, combined with the income generated by their assets, does not rise to the level of the minimum monthly maintenance needs allowance. The petitioner explained the assets, though exceeding the asset allowance, are generating a reasonable rate of interest and should be allowed to continue to do so in order to provide monthly income. Therefore the petitioner requests the amount of assets allowed to be retained by the community spouse be increased above the $68,746.50 asset allowance to allow the couple to retain the assets in order to generate income to raise the couple's monthly income amount closer to the minimum monthly maintenance needs allowance of $1,843.

I. LEGAL BACKGROUND

The federal Medicare Catastrophic Coverage Act of 1988 (MCAA) included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such 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). 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. Wis. Stat. § 49.455(3).

The MCAA also established a new "minimum monthly needs allowance" for the community spouse at a specified percentage of the federal poverty line. This amount is simply the amount of income considered necessary to maintain the community spouse in the community. A community spouse may, however, prove through the fair hearing process that he or she has financial need above the "minimum monthly needs allowance" based upon exceptional circumstances resulting in financial duress. Wis. Stat. § 49.455.

II. MA HANDBOOK PROVISIONS

When initially determining whether an institutionalized spouse is eligible for MA, county agencies are instructed to review the combined assets of the institutionalized spouse and the community spouse. MA

Handbook, Appendix 23.4.1. All available assets owned by the couple are to be considered. The assessment is completed either: (1) at the beginning of the person's first *continuous* period of institutionalization, or (2) at the date of the first request for community waivers. Id. 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 "community spouse asset share", or asset limit, to determine eligibility.

MA Handbook, Appendix 23.4.1., explains the eligibility determination process: First, a Community Spouse Asset Share (CSAS) is calculated as follows: (1) If the couple's total countable assets are $163,620 or more, the Community Spouse Asset Share (CSAS) is $84,120; (2) If the couple's total countable assets are less than $168,240 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. MA Handbook, Appendix 23.4.2. (01/01/00). At the time of the asset assessment in the present case, the asset limit was $163,620.

Second, $2,000 (the MA asset limit for the institutionalized individual) is then added to the CSAS to determine the asset allowance. As a general rule, 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 above amount, the spouse is not MA eligible.

As an exception to this general rule, the asset allowance may be increased, through the fair hearing process, if income-producing assets exceeding the asset allowance are necessary to raise the community spouse's income to the minimum monthly needs allowance. The minimum monthly maintenance needs allowance is currently defined as the lesser of $2,103 or $1,875 plus excess shelter costs. MA Handbook, Appendix 23.6.0 (05/01/01). At the time of the asset assessment in the present case the allowance was $1,843.

III. STATE STATUTE PROVISIONS

Wis. Stat. § 49.455(6)(b)3 states as follows:

> (6) Permitting transfer of resources to community spouse. (a) Notwithstanding s. 49.453(2), an institutionalized spouse may transfer an amount of resources equal to the community spouse resource allowance determined under par. (b) to, or for the sole benefit of, the community spouse without becoming ineligible for medical assistance for the period of ineligibility under s. 49.453(3) as a result of the transfer. The institutionalized spouse shall make the transfer as soon as practicable after the initial determination of eligibility for medical assistance, . . .
>
> (b) 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: . . .
>
> 3. The amount established in a fair hearing under sub. (8)(d).

Subsection (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 maintenance 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). Except in exceptional cases which would result in

> financial duress for the community spouse, the department may not establish an amount to be used under (6)(b)3 unless the institutionalized spouse makes available to the community spouse the maximum monthly income allowance permitted under sub. (4)(b) . . . (Emphasis added.)

Sub. (4)(b) defines the minimum monthly maintenance needs allowance, which in this particular case is $1,843.

Based upon the above, a hearing examiner is allowed to bypass the asset allowance limit by determining assets in excess of the allowance are necessary to generate income up to the minimum monthly maintenance needs income allowance for the community spouse. Therefore, the above provision has been interpreted to allow a hearing examiner to determine an applicant eligible for MA even if a spousal impoverishment application was initially denied based upon the fact the combined assets of the couple exceeded the asset allowance. See MRA-56/44165 and MRA-57/44361.

Upon review of the petitioner's assets and the interest rates which they generate I conclude those assets are reasonably invested. See Exhibits 5-12. Based upon all the information reviewed, I conclude I do have the authority to order assets retained exceeding the asset allowance based upon the assertion the community spouse requires those assets to raise her monthly income closer to the minimum monthly maintenance needs allowance. The reason is the institutionalized spouse has monthly income of $639 which, combined with the community spouse's monthly income of $279 equals $917. Therefore, the spouses combined income does not rise to the minimum monthly maintenance needs allowance. Even when adding the monthly estimated income of about $797 generated by the additional income producing assets, the couple's total monthly income of about $1,347 is well below the minimum monthly maintenance needs allowance of $1843.

CONCLUSIONS OF LAW

The community spouse requires the total assets of petitioner and his wife in order to raise her monthly income closer to the monthly maintenance needs allowance under the spousal impoverishment rules of the MA program, the Community Spouse Resource Allowance (CSRA) may be increased.

NOW, THEREFORE, it is **ORDERED**

That the matter is remanded to the county agency with instructions to raise the Community Spouse Asset Share retroactive to April, 2000 to include petitioner's and wife's total assets in order to raise the couple's monthly income as close to the minimum monthly maintenance needs allowance for the community spouse, within ten (10) days of the date of this decision.

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 the Division of Hearings and Appeals, 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 twenty (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 found at your local library or courthouse.

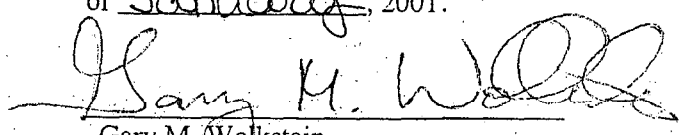
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on the Wisconsin Department of Health and Family Services, P.O. Box 7850, Madison, WI 53707-7850, as respondent.

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 26 day of January, 2001.



Gary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals
1-23-2001gmw

xc: Dane County Department of Human Services
Susan Wood, DHFS
Attorney David S. Uphoff