



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-3/47618

PRELIMINARY RECITALS

Pursuant to a petition filed January 22, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Barron County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on March 13, 2001, at Barron, Wisconsin.

The issue for determination is whether the petitioner is eligible for medical assistance under the spousal impoverishment provisions.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:
(petitioner)

Represented by:
Mary Simpson (in writing)
Dennis Herman
Barron Co Office On Aging
330 E Lasalle Ave #112
Barron, WI 54812-1580

Wisconsin Department of Workforce Development
Bureau of Work Support Programs
201 East Washington Avenue
P.O. Box 7935
Madison, WI 53707-7935
Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Carolyn Frogness, ESS
Barron County Dept Of Human Services
Courthouse Room 338
330 E Lasalle Ave
Barron, WI 54812

EXAMINER:

Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (SSN 396-12-0276, CARES #4110695643) is a resident of Barron County.
2. The petitioner and her husband have \$77,790.97 in assets.
3. The petitioner receives \$354 from social security and \$105.73 from an annuity each month.
4. The petitioner's husband receives \$705 from social security, \$87.10 from one annuity, and \$124.20 from another annuity each month.
5. The assets held by the petitioner and her husband generate \$164.53 in additional income each month.

DISCUSSION

The federal Medicare Catastrophic Coverage Act of 1988 (MCAA) is designed to protect from destitution a person whose spouse enters a nursing home and receives medical assistance. The law allows couples with assets under \$100,000 to assign \$50,000 to the community spouse. §49.455(6)(b)3, Wis. Stats.; *MA Handbook*, Appendix 23.4.2. The community spouse is the one who still lives at home. Because an institutionalized person can have up to \$2,000 in assets, couples in this position generally are allowed to have up to \$52,000 in assets and still maintain one spouse's eligibility for medical assistance. Nevertheless, if the community spouse's income does not provide for his needs, he may request through a fair hearing that the asset limit be increased. The minimum monthly maintenance needs allowance currently is the *lesser* of \$2,103 or \$1,875 plus excess shelter costs. *MA Handbook*, Appendix 23.6.0. Excess shelter costs are those above \$562.50.

The assets and income for the petitioner and her husband are found in Mary Simpson's March 9, 2001 letter to me. These figures are not disputed by the county. The petitioner and her husband receive a total of \$1,059 from social security and another \$317.03 from various annuities each month. Their assets produce an additional \$164.53 each month.. This gives a combined total of \$1,540.46, or well below the \$1,875 allowed without any excess shelter cost. Reducing the assets would further reduce the income. Therefore, the petitioner's spouse is entitled to retain all of the assets.

CONCLUSIONS OF LAW

1. The petitioner's husband requires assets in excess of the established asset allowance in order to generate monthly income at the minimum monthly maintenance needs allowance.
2. All of the couple's assets may be allocated to the petitioner's husband.
3. The petitioner is not over the asset limit for institutional medical assistance eligibility.

NOW, THEREFORE, it is

ORDERED

That the petition for review is remanded to the county agency with instructions that within 10 days of the date of this decision it certify the petitioner as eligible for institutional medical assistance retroactive to a date determined by the county agency. If the petitioner's husband disagrees with this date, he may file a new appeal.

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 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 _____ day
of _____, 2001.

Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals
79/MDO

cc: BARRON COUNTY DEPT OF HUMAN SERVICES
DHFS - Susan Wood