DHA-15 (R10/97)

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-37/48293

PRELIMINARY RECITALS

Pursuant to a petition filed February 27, 2001, under Wis. Stat. § 49.455(8)(a)5. (1999-00) and Wis. Admin. Code § HFS 103.075(8)(a)5. (November 2000), to review petitioner's Community Spouse Resource Allowance (CSRA) under the spousal impoverishment rules of the Medical Assistance (MA) program, a hearing was held on April 20, 2001 in Wausau, Wisconsin. At petitioner's request the record was held open until May 10, 2001.

The issue for determination is whether, under the spousal impoverishment rules of the MA program, petitioner's Community Spouse Resource Allowance (CSRA) may be increased.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioners:	Represented by:
(petitioner) [not present at April 20th hearing]	Ruth Jakubowski Benefit Specialist Aging & Disability Resource Center of Marathon County Lakeview Center 1000 Lakeview Drive Wausau, Wisconsin 54403

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: Sherri Seubert, ESS
Marathon County Department of Social Services
400 East Thomas Street
Wausau, Wisconsin 54403-6498

OTHER PERSONS PRESENT:

(petitioner's spouse) and Power of Attorney (POA)
(petitioner's spouse) sister and POA
Cheryl Berst, Benefit Specialist (observing only)

HEARING OFFICER:
Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN 326-24-8566; CARES 311-132-1738; DOB March 5, 1906) is a resident of Marathon County.
2. Petitioner lives in a nursing home; he was admitted to the nursing home on October 16, 2000. Exhibit #1.
3. Petitioner is married and his wife lives in a Community Based Residential Facility (CBRF) in the community. Exhibit #1.
4. In January 2001 petitioner applied for MA, under spousal impoverishment rules, with the Marathon County Department of Social Services (County). Exhibit #1.
5. By a computer generated "Notice of Decision" dated February 28, 2001 petitioner's MA application was denied due to excess assets.
6. The total combined assets of petitioner and his wife at all times relevant to this Decision were $127,911.59 or less. Exhibit #1.
7. Petitioner and his wife do not have any assets that do not generate income. Exhibit #1.
8. The total monthly income of petitioner and his wife, including income generated by the total combined assets of petitioner and his wife, is less than $1,875.00 per month. Exhibit #1.
9. The Minimum Monthly Maintenance Needs Allowance (MMMNA) for petitioner's wife is at least $1,875.00. Exhibit #1.

DISCUSSION

Under the normal MA eligibility rules, a person is not eligible for MA unless they are first in poverty. If these rules applied to situations, such as petitioner's, where one spouse is in a nursing home and the other in the community, the community spouse would be forced into poverty before the spouse in the nursing home would be eligible for MA. This is because married couples have a legal claim to the income and assets of one another.

To avoid forcing community spouses into poverty, persons, such as petitioner, who are residents of a nursing home and still have a spouse living in the community may apply for MA under special rules known as "Spousal Impoverishment" rules. These rules are designed to allow the community spouse to keep a certain portion of the married couples assets and income. See, Wis. Stat. § 49.455 (1999-00); Wis. Admin. Code HFS § 103.075 (November 2000); MA Handbook, Appendix 23.0.0.

The amount of assets a community spouse is allowed to keep is called the Community Spouse Resource Allowance (CSRA) [also sometimes called the Community Spouse Asset Share (CSAS)]. The CSRA can be invested by the community spouse to generate income, which the community spouse can then use for living expenses. If the amount of income generated by the CSRA, combined with any other income the community spouse receives (or should receive), does not rise to the level of a certain minimum monthly amount, an increase in the CSRA may be requested by way of the fair hearing process. The purpose of increasing the CSRA is to give the community spouse a greater amount of assets to invest, thereby generating a greater amount of income, which can then be used by the community spouse for living expenses. In this case, petitioner has requested that the CSRA be increased by the fair hearing process. See, Wis. Stat. §§ 49.455(6)(b)(3) & (8)(d) (1999-00); Wis. Admin. Code §§ HFS 103.075(8)(a)5. & (8)(d) (November 2000); MA Handbook, Appendix 23.4.3.2.

The CSRA can be increased if it is established at a fair hearing that the CSRA determined without a fair hearing does not generate enough income to raise the community spouse's income to the Minimum Monthly Maintenance Needs Allowance (MMMNA). In such a case a CSRA will be established by the fair hearing process that generates enough income to raise the community spouse's income to the MMMNA. Wis. Stat. § 49.455(8)(d) (1999-00); Wis. Admin. Code § HFS 103.075(8)(d) (November 2000).

In this case, the MMMNA is at least $1,875.00. The total monthly income of petitioner and his wife, including income generated by the total combined assets of petitioner and his wife, is less than $1,875.00 per month. Thus, even if all monthly income is assigned to petitioner's wife, petitioner's wife's monthly income still will fall below the MMMNA. It is evident, therefore, that a CSRA determined without a fair hearing, or even with a fair hearing, could not generate enough income to raise petitioner's wife's income to the MMMNA. It is also evident that the CSRA must be increased so as to include, up to a maximum of $127,911.59, all of the assets of petitioner's and petitioner's wife. This will bring petitioner's wife as close as possible to the MMMNA, given the total assets and income that are available to petitioner and his wife.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioners' CSRA may be increased to include all assets of petitioner and his wife, but only up to a maximum of $127,911.59.

NOW, THEREFORE, it is

ORDERED

That this matter be remanded to the County and that, within 10 days of the date of this Decision, the County redetermine petitioner's eligibility for MA retroactive to October 2000 increasing petitioner's CSRA to include all assets of petitioner and his wife, but only up to a maximum of $127,911.59.

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 _____ day
of _____, 2001.

_____

Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals
05152001/SPM

xc:
Marathon County Department of Social Services
Ruth Jakubowski, Benefit Specialist
Susan Wood, DHFS