



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-70/51915

PRELIMINARY RECITALS

Pursuant to a petition filed January 7, 2002, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Winnebago County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on February 22, 2002, at Oshkosh, Wisconsin.

The issue for determination is whether petitioner is eligible for an increase in the Community Spouse Asset Share (CSAS) in order to generate income to reach the Minimum Monthly Maintenance Needs Allowance (MMMNA).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Respondent:

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: Barb Pommerening, ESS

Winnebago County Dept Of Human Services

220 Washington Ave.

PO Box 2925

Oshkosh, WI 54903-2925

ADMINISTRATIVE LAW JUDGE:

Kenneth P Adler

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Winnebago County.

2. On December 20, 2001 petitioner filed an application for nursing home MA under Spousal Impoverishment provisions. Petitioner sought backdating of eligibility to April 1, 2001. However, MA can only be backdated three months prior to the month of application – in this case September 1, 2001.
3. Petitioner and his spouse have total assets of approximately \$81,000 producing monthly income of \$364.10. All assets are generating a reasonable rate of return.
4. Petitioner's spouse resides in the community. His monthly income is \$1,358.98 including Social Security, a pension and a loan payment. Exhibit 3
5. Petitioner's income is \$378 in Social Security.
6. The county set the community spouse asset share (CSAS) at \$56,928.19. That determination allowed the couple to keep combined assets of \$58,928.19. The community spouse income allocation (Minimum Monthly Maintenance Needs Allowance – MMMNA) was set at \$2,175 per month due to excess shelter costs for the community spouse. Exhibits 1, 2
7. From September 1, 2001 forward petitioner and his spouse had assets totaling approximately \$81,000 all in interest bearing accounts and investments. Total monthly income from the assets was approximately \$365.
8. On December 21, 2001 a notice of decision was issued stating MA was denied as assets were over the limit. Exhibit 1

DISCUSSION

The federal Medicaid Catastrophic Coverage Act of 1988 (MCAA) included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat. §49.455(1).

The MCAA established a new "minimum monthly needs allowance" for the community spouse at a specified percentage of the federal poverty line. This amount is the amount of income considered necessary to maintain the community spouse in the community. After the institutionalized spouse is found eligible, the 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(4)(a).

When initially determining whether an institutionalized spouse is eligible for MA, county agencies are required to review the combined assets of the institutionalized spouse and the community spouse. MA Handbook, Appendix 23.4.0. All available assets owned by the couple are to be considered. Homestead property, one vehicle, and anything set aside for burial are exempt from the determination. The couple's total non-exempt assets then are compared to the "asset allowance" to determine eligibility.

The county determined that the current asset allowance for this couple is \$58,928.19. See the MA Handbook, App. 23.4.2, which is based upon Wis. Stat. §49.455(6)(b). \$2,000 (the MA asset limit for the institutionalized individual) is then added to the asset allowance to determine the asset limit under spousal impoverishment policy. If the couple's assets are at or below the determined asset limit, the institutionalized spouse is eligible for MA. If the assets exceed the above amount, as a general rule the spouse is not MA eligible.

As an exception to this general rule, assets above the allowance may be retained as determined through the fair hearing process, if income-producing assets exceeding the asset limit are necessary to raise the community spouse's monthly income to the minimum monthly needs allowance. The minimum monthly maintenance needs allowance in this case is \$2,175. MA Handbook, Appendix 23.6.0.

Wis. Stat. §49.455(6)(b)3 explains this process, and subsection (8)(d) provides in its pertinent part 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).

Based upon the above, a hearing examiner can override the mandated asset allowance by determining assets in excess of the allowance are necessary to generate income up to the minimum monthly maintenance needs allowance for the community spouse. Therefore, the above provision has been interpreted to grant a hearing examiner the authority 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 spousal impoverishment asset limit.

Subsection (8)(d) quoted above includes a final sentence that requires the institutionalized spouse to make his or her income available to the community spouse before the assets are allocated. However, the Wisconsin Court of Appeals, in Blumer v. DHFS, 2000 WI App 150, 237 Wis. 2d 810, 615 N.W. 2d 647, concluded that the final sentence violated the mandate of the federal MCCA law. The Blumer court held that the hearing examiner first must allocate resources to maximize the community spouse's income, and only if the resources' income does not bring the community spouse's income up to the monthly minimum can the institutionalized spouse's income be allocated. The Blumer decision was overturned by the United States Supreme Court. 534 U.S. ____ (2002). Therefore, the Wisconsin law remains in affect.

The result in this case is as follows. Petitioner seeks MA coverage retroactive to April 1, 2001. However, MA eligibility may only be backdated three months prior to the month of application. Wis. Stat. § 49.47(4)(d). As the application was received in December 2001, eligibility may only be backdated to September 1, 2001. At that time assets totaled approximately \$81,000. The monthly income attributable to those assets was approximately \$364.10. The MMMNA was \$2,175. The community spouse's sole income was Under the applicable statutory section, all income from petitioner must first be allocated to the community spouse to raise her monthly income to the MMMNA before she can seek to retain assets above the asset limit to generate monthly income.

The community spouse's income of \$1,358.98 places him \$816.02 below the MMMNA of \$2,175 (\$2,175 - \$1,358.98). Therefore, the community spouse is eligible for an income allocation of all his wife's monthly income of \$378. This raises his monthly income to \$1,736.98. As he remains below the MMMNA, he is also eligible to have all the income-generating assets allocated to him as well, producing monthly income of \$364.10. This raises his monthly income to a grand total of \$2,101.88. While this remains below the MMMNA of \$2,175, there is no other income available for this couple. Therefore, petitioner has no cost of care contribution for which he is responsible.

I note petitioner's authorized representatives are seeking MA eligibility retroactive to April 1, 2001 as the payment on the nursing home bill was discontinued at that time due to a misunderstanding regarding MA eligibility and possible misinformation concerning that determination process. However, as indicated above, the Wisconsin statutes only allow backdating three months prior to the month of an application for MA coverage. Therefore, the request could not be granted.

CONCLUSIONS OF LAW

1. That all assets of petitioner and her husband must be allocated to her husband to raise his monthly income to the MMMNA retroactive to September 1, 2001.
2. That all of petitioner's income must be allocated to her husband.
3. That the CSAS must be increased to \$81,000 effective September 1, 2001.
4. That petitioner has no cost of care/nursing home liability.

NOW, THEREFORE, it is ORDERED

That the matter be remanded with the following instructions: (1) increase the community spouse asset share to \$81,000 effective September 1, 2001; (2) allocate all of petitioner's income to the community spouse; and (3) certify petitioner eligible for MA effective September 1, 2001. The agency shall take these actions 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 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 13th day of
March, 2002

/sKenneth P Adler
Administrative Law Judge
Division of Hearings and Appeals
315/KPA