



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-3/63857

PRELIMINARY RECITALS

Pursuant to a petition filed June 15, 2004, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Barron County Dept. of Health and Human Services in regard to medical assistance, a hearing was held on August 12, 2004, at Barron, Wisconsin.

The issue for determination is whether the petitioner's asset limit may be increased under the spousal impoverishment provisions of the medical assistance program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:
(petitioner)

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: Judy Ferber-Williams, ESS
Barron County Dept Of Human Services
Courthouse Room 338
330 E Lasalle Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) resides in a nursing home in Barron County.
2. The petitioner's spouse resides in the community.
3. The petitioner entered the nursing home on April 30, 2004. At that time she and her husband had a total of \$108,354.08 in assets

4. As of June 30, 2004, the petitioner and her husband had a total of \$92,368.83 in assets, including \$82,166.67 in a CD and the remainder in two checking accounts.
5. The petitioner receives \$312 and her husband receives \$762 in social security each month. They also receive \$435.08 from various annuities each month. Their CDs and bank accounts pay \$176.16 each month.

DISCUSSION

Medical assistance rules require nursing home residents to “apply their available income toward the cost of their care.” §HFS 103.07(1)(d), Wis. Adm. Code. However, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance, called the minimum monthly needs allowance, to the spouse of an institutionalized person so that he does not fall into poverty. *See* §49.455, Stats., and 42 U.S.C. §13964-5. This allowance is the lesser of \$2,319 or \$2,081.67 plus excess shelter costs, which are costs above \$624.50. *MA Handbook*, §5.10.6. If the community spouse falls short of this amount, the institutionalized spouse can allocate her income to him.

In addition to income, an institutionalized spouse can allocate assets to the community spouse. The law allows couples whose countable assets are less than \$185,520 but more than \$100,000 to assign half of the countable assets to the community spouse. §49.455(6)(b)2.b., Stats; *MA Handbook*, §5.10.4.2. An institutionalized person can keep up to an additional \$2,000 in assets and still maintain her eligibility for medical assistance. The petitioner and her spouse had \$108,354.08 when she entered the nursing home, so they are allowed half of that, \$54,172.04, plus \$2,000 for a total of \$56,172.04 and still have the petitioner be eligible for medical assistance. The couple’s assets have since fallen to approximately \$92,000.

If the community spouse’s income falls short of his needs even after the institutionalized spouse allocates income to him, he may request through a fair hearing that the asset limit be increased so that more income can be produced. §49.455(6)(b)3, Wis. Stats. The administrative law judge must assign sufficient assets to generate “enough income to raise the community spouse’s income to the minimum monthly maintenance needs allowance...” §49.455(8)(d), Stats. Wisconsin law, in what is referred to as the income first rule, requires that the institutionalized spouse make all of her income, except for the sum equal to the \$45 personal needs allowance, available to the community spouse before the asset limit is increased. §49.455(8)(d), Stats.; 49.45(7)(a), Stats. Wisconsin courts had overturned this requirement but the United States Supreme Court reinstated it. *Wisconsin Department of Health and Family Services v. Irene Blumer*, 534 U.S. 473, 122 S. Ct. 962 (2002), reversing and remanding *Blumer v. Wisconsin Department of Health and Family Services*, 237 Wis. 2d 810, 615 N.W.2d 647 (2000). Thus the income first rule again applies. However, in this matter, as shown below, the total income of the couple, including that from assets, is below the needs allowance, so the income first rule does not come into play. The needs allowance can also be increased at a fair hearing, but because the total income is less than this amount, there is no need to consider this issue.

The petitioner receives \$312 and her husband receives \$762 in social security each month. They also receive \$435.08 from various annuities and \$176.16 from their CDs and bank accounts each month. Their total income is \$1,871.19 per month, which falls more than \$200 short of the \$2,081.67 basic needs allowance. The only question is whether the couple’s assets produce sufficient income to be exempt. Only resources that generate income can be reallocated to the community spouse and exempted from the medical assistance asset limit, so even though the petitioner’s husband requires all of the couple’s income to meet his needs, the petitioner would remain ineligible if her non-exempt assets exceed medical assistance’s \$2,000 limit. *See* §49.455(8)(d), Stats., and DHA Final Decisions No. MRA-70/15380 and No. MRA-68/48394.

The couple's remaining assets consist of approximately \$82,000 in a CD and approximately \$10,000 in two checking accounts. The CD pays \$2,054.16 a year, or about 2½%. The checking accounts pay only \$59.89 per year, or about 0.6% per year. Although the CD provides a fairly low rate of return, it is sufficient because it is doubtful that any other investment flexible enough to be available for expenses would provide a higher return. The bank accounts provide almost no return, which would usually be unacceptable. However, if the petitioner and her husband did not have sufficient funds in a bank account to meet many of their expenses, including at this point the petitioner's nursing home costs, they would have to invest in a CD that came due more frequently, which would drive its return even lower. I find, therefore, that the couple's assets satisfy the dual requirements that they produce sufficient income while also being available for monthly expenses. The petitioner qualifies for relief under the spousal impoverishment provisions of the medical assistance program, and she is eligible for institutional medical assistance without being responsible for a share of her medical costs.

The remaining question is when the petitioner's eligibility began. Medical assistance rules allow eligibility to be backdated for up to three months if an applicant meets all of the program's requirements. §HFS 103.08(1), Wis. Adm. Code. The petitioner entered the nursing home on April 30, 2004, and applied for medical assistance within three months of that date. She and her husband had approximately \$20,000 more assets at that time, all in CDs, so their interest income was presumably higher. However, unless the income from those CDs exceeded \$200 per month, or 10% per year, the couple's total income was still under the spousal impoverishment limit. Because I know of no CD that has paid anywhere near that level in the past year, I find that the petitioner is eligible retroactive to April 30, 2004, without being responsible for a share of her medical costs.

I note that the petitioner and her husband must *transfer all of their assets into the husband's name only within one year*. If they fail to do so, the petitioner will be considered over the asset limit and ineligible for institutional medical assistance.

CONCLUSIONS OF LAW

1. The petitioner is eligible for institutional medical assistance retroactive to April 30, 2004.
2. All of the assets of the petitioner and her husband are needed to ensure that the petitioner's husband's income meets his minimum monthly maintenance needs.
3. All of the income of the petitioner and her husband are needed to ensure that the petitioner's husband meets his minimum monthly maintenance needs.

NOW, THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it find the petitioner eligible for institutional medical assistance retroactive to April 30, 2004. When doing so it shall allocate all of her income to her husband and not require her to contribute toward the cost of her medical care.

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 Eau
Claire, Wisconsin, this 27th day of
August, 2004

/s/sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals
128/MDO