



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[REDACTED]  
c/o [REDACTED]  
[REDACTED]

DECISION

MRA-17/43715

PRELIMINARY RECITALS

Pursuant to a petition filed March 6, 2000, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Dunn County Dept. of Human Services in regard to the spousal allowance, a hearing was held on March 29, 2000, at Menomonie, Wisconsin.

The issue for determination is whether the spousal allowance of the petitioner's husband may be increased.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

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: Deborah Drinkman, ESS  
Dunn County Department of Human Services  
808 Main Street  
PO Box 470  
Menomonie, WI 54751

**EXAMINER:**

Michael D. O'Brien, Attorney  
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (SSN [REDACTED], CARES # [REDACTED]) resides in Dunn County.

2. The petitioner's spouse resides in the ██████████ Area Nursing Home.
3. The petitioner's income is \$2,241 per month.
4. The petitioner's expenses total \$2,182.42 per month.

### DISCUSSION

Both Wisconsin and federal medical assistance laws have provisions that grant an allowance to the spouse of institutionalized person so that the spouse does not fall into poverty. See §49.455, Wis. Stats., and 42 U.S.C. §13964-5. The petitioner is institutionalized. The allowance for 2000 is \$2,103 according to the state computer printout. This allowance can be increased at a fair hearing if there are exceptional circumstances that result in financial duress. See §49.455(8)(c), Stats. The petitioner's husband earns \$2,241 in income per month, or \$138 more than the spousal allocation. He submitted a budget that initially showed \$1,918 in monthly expenses. *Exhibit 1*. Most of this was credit card and mortgage debt. All of the living expenses, such as food and utility payments, appeared to be within those normally claimed in this area. At the hearing a clothing allowance was added to bring the total to \$1,988. After the hearing the petitioner submitted a statement that listed an \$83.50 a month Medicare supplement and \$50 to pay back money loaned to him as part of an overdraft protection by the bank. *Exhibit 2*. He also submitted his 1999 tax return which showed that he paid \$60.92 a month in state and federal income taxes. This brings his total of reasonable expenses each month to \$2,182.42. This is still less than his personal income, but more than the spousal allowance. At this point he has established that he requires \$2,182.42 to live on each month and so I will raise his spousal allowance to that amount. Any income he earns above this amount must go to his wife's care.

### CONCLUSIONS OF LAW

The petitioner has demonstrated that he requires \$2,182.42 to live on each month.

NOW, THEREFORE, it is ORDERED

That this matter be remanded to the county agency with instructions that within 10 days of the date of this order it increase the petitioner's spousal allowance to \$2,182.42 per month.

### 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.

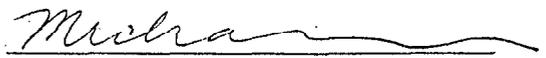
**APPEAL TO COURT**

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 12<sup>th</sup> day  
of May, 2000.



Michael D. O'Brien, Attorney  
Division of Hearings and Appeals  
428/

cc: DUNN COUNTY DHS w/attachment  
DHFS - Susan Wood



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MRA- 13/43721

PRELIMINARY RECITALS

Pursuant to a petition filed March 6, 2000, under Wis. Stat. § 49.455(8)(a)5. (1997-98) and Wis. Admin. Code § HFS 103.075(8)(a)5. (January 1997), determinations made under the spousal impoverishment rules of the Medical Assistance (MA) program, a hearing was held on March 22, 2000 in Madison. At petitioner's request the hearing was continued on April 27, 2000 in Madison, Wisconsin.

The issues for determination are:

- (I) whether the Sauk County, Wisconsin home owned by petitioner and his wife is a countable asset under the spousal impoverishment rules of the MA program; and,
- (II) whether, under the spousal impoverishment rules of the MA program, the Community Spouse Resource Allowance (CSRA) may be increased.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioners:

[REDACTED]

Represented by:

David S. Uphoff  
Lathrop & Clark LLP  
Law Offices  
740 Regent Street  
Suite 400  
P.O. Box 1507  
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: Linda Rasmussen, ESS  
Dane County Department of Human Services  
Division of Economic Assistance & Work Services  
2322 South Park Street  
Madison, Wisconsin 53713-1918

**OTHER PERSONS PRESENT:**

[REDACTED] petitioner's wife, guardian, and Power of Attorney  
[REDACTED] petitioner's son  
[REDACTED] petitioner's daughter (Rosemary Smanz was present only on March 22, 2000)

**HEARING OFFICER:**

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

**FINDINGS OF FACT**

1. Petitioner (SSN [REDACTED] CARES # [REDACTED] DOB June 24, 1916) is a resident of Dane County, resides in a nursing home, and is married to [REDACTED] [MFR] (DOB [REDACTED] Exhibits #1A, #1C & #2.
2. Petitioner applied for MA, under spousal impoverishment rules, with the County on January 4, 2000 and was denied due to excess assets. Exhibit #2.
3. Petitioner and MFR own a home in Sauk County, Wisconsin that has a value of approximately \$84,100.00. Exhibits #1C & #2.
4. Both petitioner and MRF both intend to return to live in their home in Sauk County, Wisconsin.
5. On the date of petitioner's application for MA, January 4, 2000, the countable assets of petitioner and MFR include at least the following assets that do not earn any interest or otherwise generate any income: (a) a 1931 Allis Chalmers farm tractor with a value of approximately \$1,425.00; and (b) an interest in certain real estate in Washington County, Missouri. Exhibits #2 & #A4.
6. The value of petitioner's and MRF's interest in the Washington County, Missouri real estate is uncertain, but the value of the real estate itself is approximately \$8,500.00. Exhibits #A3 & #A4.

**DISCUSSION**

Petitioner requested a hearing for two reasons. First, petitioner argues that the Sauk County, Wisconsin home is not a countable asset for MA purposes. Second, petitioner requests that the CSRA be increased to include all assets belonging to him and all assets belonging to MRF.

## (I) SAUK COUNTY, WISCONSIN HOME

When a person resides in an institution the person's home is exempt from being counted as an asset for MA purposes as long as the institutionalized person expresses his/her intent to return to the home. If the person is able to form an intent but unable to express it then determine intent through other available evidence such as: the person's written statements; the person's oral statements made before incapacitation (accept reports of these statements made by family members); and, reports of the person's intent made by authorized representatives. If the person appears unable to form an intent but has not been judged incompetent by a court, accept family member's statements as evidence of intent. If the person has been judged incompetent, accept the intent statement of the person's guardian. MA Handbook, Appendix 23.4.0.1 & 11.7.3.2; 20 C.F.R. § 416.1212(c) (1998); Wis. Stat. § 49.455(1)(e) (1997-98); Wis. Admin. Code §§ 103.075(3)(g) & (5)(b)2.e. (March 2000); DHA Case No. MED-37/65251 (Wis. Div. Hearings & Appeals August 21, 1992) (DHFS Final Decision subsequent to DHA Proposed Decision).

In this case the evidence is clear that petitioner intends to his Sauk County, Wisconsin home. Therefore, the Sauk County, Wisconsin home is an exempt asset and cannot be counted for MA purposes.

## (II) CSRA INCREASE REQUEST

Under the normal MA eligibility rules applicable to persons such as petitioner, 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 is not, 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 have a spouse who is not 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 (1997-98); Wis. Admin. Code HFS § 103.075 (March 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)]. Importantly, the CSRA is determined as of the time a person applies for MA. MA Handbook, Appendix 23.4.2 & 23.4.3.

There is a standard CSRA amount. 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, petitioners have requested that the CSRA be increased by the fair hearing process. See, Wis. Stat. §§ 49.455(6)(b)(3) & (8)(d) (1997-98); Wis. Admin. Code §§ HFS 103.075(8)(a)5. & (8)(d) (March 2000); MA Handbook, Appendix 23.4.3.3.

As a Administrative Law Judge (ALJ), I am bound to follow Final Decisions of the Secretary of the State of Wisconsin Department of Health and Family Services (DHFS). Final Decisions are made subsequent to Proposed Decisions issued by the Division of Hearings and Appeals (DHA). Pursuant to prior Final Decisions, a request to increase the CSRA by the fair hearing process is ripe for decision only if it can be established that the MA applicant, in this case petitioner, is otherwise eligible for MA.

Specifically, Final Decisions of the DHFS Secretary state that only resources that generate income can be added to the CSRA by the fair hearing process. Put another way, any assets of the nursing home resident and the community spouse that do not generate income cannot be used to increase the CSRA. The MA asset limit is \$2,000. Wis. Stat. § 49.47(4)(b)3g.e. (1997-98); Wis. Admin. Code § HFS 103.04(2) (March 2000). Thus, if the nursing home resident and the community spouse have in excess of \$2,000 in assets that do not generate income, no increase in the CSRA can be made because the nursing home resident is not otherwise eligible for MA. This is because, even if the CSRA were increased so as to include all resources that do generate income, the nursing home resident would still not be eligible for MA because the \$2,000 MA asset limit would be exceeded by the non-income-generating assets. DHA Case No. MRA-5/35807 (Wis. Div. Hearings & Appeals December 7, 1998) (DHFS Final Decision subsequent to DHA Proposed Decision); and, DHA Case No. MRA-70/15380 (Wis. Div. Hearings & Appeals August 19, 1997) (DHFS Final Decision subsequent to DHA Proposed Decision).

It is the normal assumption that an applicant is not entitled to benefits unless and until the applicant proves eligibility. *Lavine v. Milne*, 424 U.S. 577; 584 (1976). In this case, it has not been established that petitioner is otherwise eligible for MA because petitioner and MRF have not shown that they do not have in excess of \$2000 in assets that do not generate income. Specifically, on the date of application, January 4, 2000, petitioner and MRF had at least the following assets that do not earn any interest or otherwise generate any income: (a) a 1931 Allis Chalmers farm tractor with a value of approximately \$1,425.00; and (b) an interest in certain real estate in Washington County, Missouri. It has not been established that these assets do not exceed the \$2,000.00 MA asset limit. Therefore, I cannot grant petitioners' request to increase the CSRA.

In an attempt to avoid this result petitioner, well after the date of his MA application, made efforts to convert the interest in the Washington County, Missouri real estate into an income producing asset. Exhibits #A3 & #A4. However, as noted above, the CSRA is determined as of the time a person applies for MA.

If a person is not eligible on the date of application due to non-income producing assets in excess of \$2,000 they cannot be made eligible by a subsequent change of those assets into income producing assets. The person must reapply. Other circumstances affecting eligibility may also have changed. Petitioner may file a new MA application if he wishes.

#### CONCLUSIONS OF LAW

For the reasons discussed above:

(I) the Sauk County, Wisconsin home of petitioner and MRF is an exempt asset and cannot be counted for MA purposes; and

(II) petitioner's request to increase the CSRA by the fair hearing process is not ripe for decision and must be denied.

NOW, THEREFORE, it is

**ORDERED**

That the Sauk County, Wisconsin home of petitioner and MRF is an exempt asset and cannot be counted for MA purposes for as long as petitioner intends to return to it. In all other respects it is ordered that the petition for review herein be and the same is hereby dismissed.

**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.

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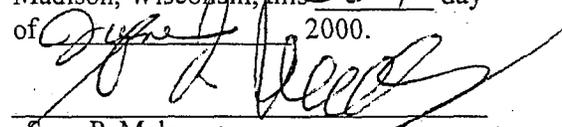
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Appeals for benefits concerning Medical Assistance (MA) must be served on the Wisconsin Department of Health and Family Services, P.O. Box 7850, Madison, WI 53707-7850, as respondent.

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 30th day  
of August 2000.

  
Sean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals  
06232000/SPM

xc: Dane County Department of Human Services (w/attachment)  
Susan Wood, DHFS  
Attorney David S. Uphoff