

STATE OF WISCONSIN
DEPARTMENT OF HEALTH & SOCIAL SERVICES

In the Matter of

DECISION

MRA-33/92574

P R E L I M I N A R Y R E C I T A L S

Pursuant to a petition filed December 22, 1995, under §§ 49.455(8)(a)5. & (8)(d) Wis. Stats., and §§ HSS 103.075(8)(a)5. & (8)(d) Wis. Adm. Code, to determine whether the petitioner's wife's (Community Spouse) resource allowance must be increased, a hearing was held on January 23, 1996 in Darlington, Wisconsin.

The issue for determination is whether the Community Spouse's resource allowance must be increased.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:	Petitioner:	not present
	:	
	:	
	:	
	:	
	:	
	:	
	:	

By:
Scott Thompson, attorney
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Wisconsin Department of Health & Social Services
Bureau of Welfare Initiatives
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P.O. Box 7851
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By: Kate Monson, ESS
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700 North Main Street
Darlington, Wisconsin 53530

EXAMINER:

Sean P. Maloney, Hearing Examiner
Department of Health & Social Services

F I N D I N G S O F F A C T

1. Petitioner (SSN: _____, CARES No. _____) is a resident of LaFayette County.¹
2. Petitioner has been a patient at Rolling Hills Nursing Home in Sparta, Wisconsin since January 5, 1995.
3. Petitioner applied for Medical Assistance (MA) under spousal impoverishment rules in October 1995.
4. The Lafayette County Department of Human Services (County) issued a Negative Notice dated November 24, 1995 denying petitioner's application for MA because "total combined assets are . . . over the asset limit". See, Exhibit #1.
5. The County correctly calculated the available assets at the time of petitioner's MA application to be in excess of the asset limit.
6. The total combined resources of petitioner and petitioner's Community Spouse assets are in excess of \$220,000.00.
7. The Community Spouse has no other resources otherwise available to her.
8. Petitioner's monthly income is approximately \$1,030.00.
9. The Community Spouse's monthly income is approximately \$1,215.00.
10. Petitioner has not made available to the Community Spouse the maximum monthly income allowance permitted.
11. Petitioner has no expenses for family allowances or for medical or remedial care.

D I S C U S S I O N

The issue in this case is whether the Community Spouse must be allowed to retain resources in excess of the MA asset limit in order that income from the additional resources may be used toward raising the income of the Community Spouse to the level of the minimum monthly maintenance needs allowance.

The MA asset limit in this case is determined by adding together the community spouse resource allowance (also called the community spouse asset share) and the MA asset limit for one person. § HSS 103.04(4) Wis. Adm. Code; MA Handbook, Appendix 23.4.1.

¹ see, *In the Matter of the Guardianship & Protective Placement of: _____, Incompetent, Order For Change of Venue*, case number 94 GN 98, Monroe County Circuit Court, The Honorable James W. Rice (Reserve Judge), April 13, 1995, paragraph #2.

The Community Spouse resource allowance is the amount by which the amount of resources otherwise available to the Community Spouse is exceeded by \$74,820.00. § 49.455(6)(b) Wis. Stat.; § HSS 103.04(4) Wis. Adm. Code; MA Handbook, Appendix 23.2.2. In this case, the Community Spouse has no other resources otherwise available to her. Thus, the Community Spouse resource allowance in this case is \$74,820.00. The Community Spouse resource allowance can be increased only by the Fair Hearing process or by court order. § 49.455(6)(b)3 & 4 Wis. Stats.; § HSS 103.04(4) Wis. Adm. Code; MA Handbook, Appendix 23.4.1. The MA asset limit for one person is \$2,000.00. § 49.47(4)(b)3g Wis. Stat.; § HSS 103.04(4) Wis. Adm. Code. Thus, the MA asset limit in this case is a total of \$76,820.00 (\$74,820.00 plus \$2,000.00). The County properly denied petitioner's application in this case because the combined resources of the petitioner and Community Spouse exceed the MA asset limit.

The Community Spouse resource allowance can be increased by the Fair Hearing process. § 49.455(6)(b)3 Wis. Stats.; § HSS 103.04(4) Wis. Adm. Code; MA Handbook, Appendix 23.4.1. Two conditions must be satisfied before the Community Spouse resource allowance can be increased by the Fair Hearing process. The Community Spouse resource allowance cannot be increased by the Fair Hearing process unless both conditions are satisfied. see, § 49.455(8)(d) Wis. Stats.²

First, it must be established at a Fair Hearing that the Community Spouse resource allowance determined without a Fair Hearing (\$74,820.00) does not generate enough income to raise the Community Spouse's income to the minimum monthly maintenance needs allowance. see, § 49.455(8)(d) Wis. Stats. It is not necessary, in this case, to address the first condition since the second condition is not satisfied.

Second, except in exceptional cases which would result in financial duress for the Community Spouse, petitioner must either: (A) make available to the Community Spouse the maximum monthly income allowance permitted; or, (B) if the petitioner does not have sufficient income to make available to the Community Spouse the maximum monthly income allowance permitted, the petitioner must make available to the Community Spouse all of his income except for the personal needs allowance, any family allowances, and the amount incurred as expenses for medical or remedial care for the petitioner. § 49.455(8)(d) Wis. Stats.

There was no argument made that this is an exceptional case which would result in financial duress for the Community Spouse. The total combined resources of petitioner and petitioner's Community Spouse are in excess of \$220,000.00. The Community Spouse's monthly income is in excess of \$1,215.00. Thus, this is not an exceptional case which would result in financial duress for the Community Spouse.

The Community Spouse's maximum monthly income allowance in this case is the minimum monthly maintenance needs allowance minus the amount of monthly income otherwise available to the Community Spouse. § 49.455(4)(b)1. Wis. Stats. The

² The second of these two conditions does not appear in either federal law or in the Wisconsin Administrative Code. see, 42 U.S.C. § 1396-r5(e)(2)(C); § HSS 103.075(8)(d) Wis. Adm. Code. As a Hearing Examiner for the State of Wisconsin Department of Health and Social Services I must follow the Law of the State of Wisconsin. Furthermore, if there exists a conflict between the Wisconsin Administrative Code and Wisconsin State Statutes, Wisconsin State Statutes control.

minimum monthly maintenance needs allowance is \$1,867.50. see, § 49.455(4)(c) Wis. Stats.; MA Handbook, Appendix 23.6.0 (page 7, § A1). The amount of monthly income otherwise available to the Community Spouse in this case is approximately \$1,215.00. Thus, the Community Spouse maximum monthly income allowance in this case is approximately \$652.50 (\$1,867.50 minus approximately \$1,215.00).

As to part (A) of the second condition: There was no evidence presented that petitioner has made any of his approximately \$1,030.00 monthly income available to the Community Spouse. Thus, I conclude that petitioner has not made available to the Community Spouse the permitted \$652.50 maximum monthly income allowance. Therefore, part (A) of the second condition is not satisfied.

As to part (B) of the second condition: Petitioner's monthly income is approximately \$1,030.00. Petitioner's personal needs allowance is \$40.00. §§ 46.455(4)(a)1 & 49.45(7)(a) Wis. Stats.; MA Handbook, Appendix 23.6.0 (page 8, sec. C2). There was no evidence presented that petitioner has any expenses for family allowances or for medical or remedial care. Thus, I conclude that petitioner has no expenses for family allowances or for medical or remedial care. Petitioner's monthly income, after deduction of petitioner's \$40.00 personal needs allowance, is approximately \$990.00. The Community Spouse maximum monthly income allowance in this case is approximately \$652.50. Thus, it is not the case that petitioner does not have sufficient income to make available to the Community Spouse the maximum monthly income allowance. Therefore, part (B) of the second condition is not satisfied in this case.

The second condition that must be satisfied before the Community Spouse resource allowance can be increased by the Fair Hearing process is not satisfied. The Community Spouse resource allowance cannot be increased by the Fair Hearing process unless both conditions are satisfied. Therefore, the Community Spouse resource allowance cannot be increased in this case by the Fair Hearing process.

C O N C L U S I O N S O F L A W

The Community Spouse resource allowance cannot be increased in this case by the Fair Hearing process.

NOW, THEREFORE, it is

O R D E R E D

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 Office of Administrative Hearings, P. O. Box 7875, Madison, Wisconsin 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.

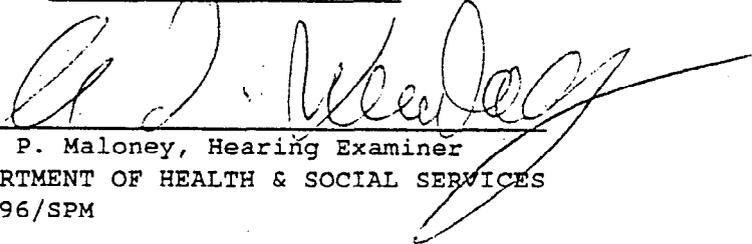
Your request for a new hearing must be received no later than 20 days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in § 227.49 of the state statutes. A copy of the statutes can be found at your local library or courthouse.

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 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The appeal must be served on the Department of Health and Social Services as respondent, P. O. Box 7850, Madison, Wisconsin 53707-7850.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in § 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 12TH
day of FEBRUARY, 1996.


Sean P. Maloney, Hearing Examiner
DEPARTMENT OF HEALTH & SOCIAL SERVICES
020996/SPM

cc: Petitioner
LaFayette Co. DSS
Scott Thompson, Atty.