

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

(petitioner)  
c/o Joan Larson, CSW  
Sawyer County Aging Unit  
P O Box 502  
Hayward, WI 54843

DECISION

MRA-57/49992

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 25, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Sawyer County Dept. of Social Services in regard to the spousal impoverishment provisions of the medical assistance program, a hearing was held on September 13, 2001, at Hayward, Wisconsin. This matter was rescheduled from August 15, 2001 at the petitioner's request.

The issue for determination is whether the community spouse's resource limit can be raised from \$87,000 to \$240,968.71.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)  
c/o Joan Larson, CSW  
Sawyer County Aging Unit  
P O Box 502  
Hayward, WI 54843

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: Mimi Sawyer, ESS  
Sawyer County Human Services  
105 E. Fourth Street  
PO Box 730  
Hayward, WI 54843

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxx) is a resident of a nursing home in Sawyer County.

2. The petitioner applied for medical assistance on July 19, 2001. His application was denied because his and his spouse's combined assets exceeded the program's \$2,000 asset limit even after \$87,000 of their assets were assigned to the spouse.
3. The petitioner's income consists of a social security benefit check of \$76 per month and a monthly pension of \$665.23. His spouse's income consists of a social security benefit check of \$175 per month.
4. The petitioner and his spouse had \$240,968.71 in assets when he applied for medical assistance.
5. The assets of the petitioner and his spouse invested in Community First National, Lutheran Brotherhood, Fidelity Puritan, Merrill Lynch, and GE Mutual Funds total \$76,811.42 and generate an average of \$199.77 in income each month.
6. The petitioner's remaining assets consist of trusts, corporate bonds, equities and government securities. They do not produce income that can be used by the petitioner's spouse to increase the amount she has available for her monthly living expenses.

### DISCUSSION

The federal Medicare Catastrophic Coverage Act of 1988 is designed to protect from destitution a person whose spouse enters a nursing home and receives medical assistance. The law allows couples with assets exceeding \$174,000 to assign \$87,000 to the community spouse. §49.455(6)(b)3, Wis. Stats. *MA Handbook*, Appendix §23.4.2. Because an institutionalized person can have up to \$2,000 in assets, couples in this position generally are allowed to have up to \$89,000 in assets and still maintain one of the spouse's eligibility for medical assistance. Nevertheless, if the community spouse's income falls short of her needs, she may request through a fair hearing that the asset limit be increased so that more income can be produced. 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. The minimum monthly maintenance needs allowance currently is the lesser of \$2,175 or \$1,935 plus excess shelter costs. *MA Handbook*, Appendix §23.6.0. Excess shelter costs are shelter costs above \$562.50. *Id.*

Joan Larson, the benefits specialist for the Sawyer County Aging Unit, submitted documentation showing that the petitioner and his wife have \$240,968.71 in assets. *Exhibit 1*. That documentation shows that assets invested in Community First National, Lutheran Brotherhood, Fidelity Puritan, Merrill Lynch, and GE Mutual Funds total \$76,811.42 and generate an average of \$199.77 in income each month. The remaining \$164,157.29 in assets consists of trusts, corporate bonds, equities and government securities. Ms. Larson was unable to specify the income that these assets produced because the companies do not provide year-to-date information regarding income from interest or dividends. She assumed each produces 5% income and assigned a total of \$885.23 monthly income to these assets.

I find that the \$164,157.29 in trusts, corporate bonds, equities, and government securities cannot be used to raise the asset limit. The purpose of increasing the asset limit is not to preserve the assets for the petitioner and his family but to allow his spouse to maintain a basic standard of living after he enters an institution. Therefore, only resources that generate income can be reallocated at a fair hearing to the community spouse and exempted from the medical assistance asset limit. §49.455(8)(d), Stats.; DHA Final Decisions No. MRA-70/15380 and No. MRA-68/48394. While the petitioner's representative has arbitrarily allocated 5% income to these assets there is no evidence other than a tax return that they actually produce any income that the spouse can use to meet her needs. The tax return shows only the amount of dividends earned. A dividend that is reinvested in a company does not meet this requirement, and there is no indication that these dividends were used to support the spouse's monthly needs.

The requirement that assets must produce income that is actually available to help the spouse meet her needs is supported by Final Decision No. MRA -68/48394, which like all final decisions is binding upon me. That decision found that a life insurance policy could not be assigned to the spouse for the following reason:

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 that can be used by the community spouse for living expenses. In order to serve such a purpose an asset must generate income that can be put to immediate use by the community spouse for living expenses. Life insurance policies producing dividends that are reinvested do not do this. [Pages in the decision are unnumbered.]

The same logic applies to stocks, bonds, and securities that may produce annual dividends that are reinvested, but do not produce income that is available for the spouse's monthly needs. In this matter the petitioner and his representatives have failed to demonstrate that the \$164,157.29 invested in trusts, corporate bonds, equities and government securities will improve the spouse's monthly living standard. Therefore, except as is necessary to reach the \$87,000 limit allowed by the spousal impoverishment limits, the petitioner cannot assign any assets to his wife and remain eligible for medical assistance. Assuming the petitioner retains \$2,000, and assigns the \$76,811.42 of their assets that produce income to his spouse, only \$10,188.58 of the remaining assets may be assigned to her. This leaves him more than \$150,000 over the asset limit. If he still desires medical assistance he must reapply and either rearrange his assets to produce more income that is readily available or present evidence that shows that his current assets produce a steady stream of usable income.

### **CONCLUSIONS OF LAW**

1. The petitioner cannot assign more than \$87,000 in assets to his spouse because he has not shown that the assets will produce income that the petitioner can use to meet her monthly needs.
2. The petitioner is ineligible for medical assistance because his countable assets exceed \$2,000.

**NOW, THEREFORE, it is ORDERED**

That the petition herein be and the same hereby is 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.

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 24<sup>th</sup> day of October, 2001.

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/s Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals  
1121/MDO

cc: Tom Leighty- Sawyer Co.  
Susan Wood