



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MED-13/63734

PRELIMINARY RECITALS

Pursuant to a petition filed May 20, 2004, under WI Stat § 49.45(5) and WI Admin Code §HA 3.03(1), to review a decision by the Dane County Dept. of Human Services in regards to the denial of Institutional – Medical Assistance (MA), a hearing was held on June 30, 2004, at Madison, Wisconsin.

The issue for determination is whether the whether the petitioner’s CSAS may be increased, to then allow an allocation to his community spouse to increase her monthly income, pursuant to “spousal impoverishment” rules.

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: Alecia Lehman-Laas, ESS
Dane County Dept Of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN: xxx-xx-xxxx; CARES #xxxxxxxxxx) is a resident of Dane County. He was admitted to a nursing home on a date unknown prior to February 1, 2004. His spouse, (petitioner's spouse), continues to reside in the community in the family home.
2. The petitioner applied for Institutional - MA on May 6, 2004. An asset assessment was completed, and the agency determined that the couple’s combined countable and non-exempt assets at the time of his institutionalization were \$95,821.03. The applicable Community Spouse

Assets Share (CSAS) for this couple was \$50,000, plus the standard MA asset amount of \$2,000, or \$52,000 as an asset limit.

3. The agency issued written notice of MA denial on May 14, 2004; the basis for denial was that the couple had countable non-exempt assets that were \$43,821.03 in excess of the applicable \$52,000 limit.
4. The petitioner's community spouse has fixed monthly income, not including investment income referenced in Finding #5, below, of \$217 (Social Security benefits). The petitioner has monthly income of \$539 (Social Security benefits).
5. The petitioner and his wife hold all of the \$95,821.03 of countable, non-exempt, assets in a local bank in certificates of deposit, checking account(s), and savings account(s); and these accounts generate total monthly investment income of \$174.66.
6. The petitioner's wife's monthly income is far below the Minimum Monthly Maintenance Needs Allowance (MMMNA) of \$2,020. The petitioner seeks to have his wife's CSAS increased to an amount that will allow retention of all of the countable, non-exempt, liquid assets that generate the monthly income stated in Finding #5.
7. The petitioner filed an appeal with the Division of Hearings & Appeals on May 20, 2004.

DISCUSSION

The petitioner's representatives did not articulate very well why they were appealing the initial denial of his MA application. But after consideration of the record, it became clear that they were, in essence, asking the administrative law judge to *re-allocate* the joint countable assets of the couple to the community spouse because she needs the income the assets generate. This would also make the institutional spouse eligible for MA, under MA spousal impoverishment rules.

"Spousal impoverishment" rules were created with passage of the federal Medicare Catastrophic Coverage Act of 1988 (MCCA), which included extensive changes in state Medicaid (MA) eligibility determinations in cases involving married persons. In spousal impoverishment cases, the institutionalized spouse resides in a nursing facility and "community spouse" refers to the person married to the institutionalized individual. WI Stat § 49.455(1). Generally, no income of a community spouse is considered to be available for use by the other spouse during any month in which that other spouse is institutionalized. WI Stat § 49.455(3).

The MCCA created *asset* eligibility limits for spousal impoverishment households that are more generous than those for a non-spousal impoverishment household (e.g., \$2,000 for a single person). The MCCA also established a Minimum Monthly Maintenance Needs Allowance (MMMNA) *income* allowance for the community spouse at a specified percentage of the federal poverty line. This income allowance is the amount of monthly income deemed necessary for the community spouse to live on. However, a community spouse may prove through the fair hearing process that s/he has financial need above the MMMNA based upon exceptional circumstances resulting in financial duress. WI Stat § 49.455. In this case, the community spouse is not arguing that he has financial need above the MMMNA.

When initially determining whether an institutionalized spouse is MA eligible, county agencies review the combined assets of the institutionalized spouse and the community spouse. Medicaid Eligibility Management Handbook, App. 23.4.1. All available assets owned by the couple are to be considered. Homestead property, one vehicle, and anything set aside for burial is exempt from the determination. The couple's total assets are then compared to the CSAS (i.e., an asset limit) to determine eligibility.

Medicaid Eligibility Management Handbook, App. 23.4.2, explains the asset eligibility determination process: First, a (CSAS) is calculated as follows: **(1)** If the couple's total countable assets are \$181,320 or more, the CSAS is \$90,660; **(2)** If the couple's total countable assets are less than \$181,320 but greater than

\$100,000, the CSAS is 1/2 of the total countable assets of the couple; and (3) if the total countable assets of the couple are \$100,000 or less, the CSAS is \$50,000. WI Stat § 49.455(6)(b)3; Medicaid Eligibility Management Handbook, App. 23.4.2 (1-1-03). Second, \$2,000 (the MA asset limit for the institutionalized individual) is then added to the CSAS to determine the total asset allowance for the couple. Generally, if the couple's assets are at or below the determined asset allowance, the institutionalized spouse is eligible for MA. If the assets exceed the asset allowance calculated for the couple, the institutionalized spouse is not MA eligible.

In this case, the parties do not dispute the couple's countable non-exempt assets at the time of nursing home entry were approximately \$95,821.03. Based upon the above, the amount of assets the couple would be allowed to retain would be \$52,000 -- with \$2,000 of that amount being retained by the institutionalized spouse seeking MA eligibility. Therefore, per the assessment, the petitioner and his community spouse exceeded the \$52,000 MA asset limit by \$43,821.03.

As an exception to the general rule, the Community Spouse Asset Share (CSAS) may be increased, through the fair hearing process, if the assets generate income on a monthly basis and the assets and income are necessary to raise the community spouse's income to the Minimum Monthly Maintenance Needs Allowance. WI Stat § 49.455(8)(d), WI Admin Code § HFS 103.075(8)(c). As of March 1, 2003, the MMMNA was defined as the lesser of \$2,266.50 or \$2,020 plus excess shelter costs. Medicaid Eligibility Management Handbook, App. 23.6.0. The appropriate MMMNA in this case is \$2,020.

The petitioner does not assert that the community spouse requires more than the designated \$2,020 income allowance to continue residing in the community. However, petitioner does assert the couple should be able to retain assets above the \$52,000 asset limit in order to generate income to reach the MMMNA to which the community spouse is entitled. He requests that the couple be allowed to retain the assets in Finding #5, thus asking this administrative law judge to find that \$95,821.03 in assets are necessary to generate a monthly income which will approach or meet the MMMNA for the community spouse.

The pertinent state statute, WI Stat § 49.455(6),(8), allows an administrative law judge (ALJ) to increase the CSAS/resource allowance under limited circumstances:

(6) PERMITTING TRANSFER OF RESOURCES TO COMMUNITY SPOUSE.

...

(b) The community spouse resource allowance equals the amount by which the amount of resources otherwise available to the community spouse is exceeded by the greatest of the following: . . .

3. The amount established in a fair hearing under sub. (8)(d).

...

(8) FAIR HEARING. . .

(d) 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). Except in exceptional cases which would result in financial duress for the community spouse, the department may not establish an amount to be used under (6)(b)3 unless the institutionalized spouse makes available to the community spouse the maximum monthly income allowance permitted under sub. (4)(b) . . .*

(Emphasis added.)

Based upon the above, an administrative law judge (ALJ) is allowed to bypass the CSAS by determining assets in excess of the limit are necessary *to generate income up to the MMMNA for the community spouse*. Therefore, the above provision has been interpreted to allow an ALJ 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 asset allowance. See MED-62/94792, MED-36/93977, MRA-13/50545, and MED-71/61023. I will do so here.

As an aside, Wisconsin statutes also direct the department to require the institutionalized spouse to *first* make all of his or her *income* available to the community spouse before additional *assets* above the standard CSAS are allowed to be retained by the community spouse to raise her/his income to the MMMNA. See also MED-23/12842 (Blumer). In the instant case, the institutionalized spouse's income (\$539) plus the community spouse's income (\$217) only totals \$756. When the income from the assets (\$174.64) is added to these income amounts, the resulting total of \$930.64 is still far below the \$2,000 MMMNA. Thus, an increased CSAS for increased income generation is appropriate.

I am satisfied that these assets are generating a reasonable, if conservative, investment return. They must be used to increase the CSAS and thereby increase the community spouse's monthly income to an amount that is *closer* to the MMMNA. Given the current low-interest rate climate, I have no problem concluding that this is a reasonable return, if somewhat on the conservative side at about an average of 2.2 % per annum.

Therefore, all of the assets should be allocated for a higher CSAS. The CSAS for this household shall be increased to **\$95,821.03**. Therefore, the petitioner was financially eligible under the new asset limit (\$95,821.03 CSAS, plus \$2,000 MA standard asset limit). The matter will be remanded to the county agency with instructions to change the CSAS to \$95,821.03; reverse the denial of the petitioner's May 6, 2004, application for Institutional MA; and certify him as eligible for Institutional MA retroactive to beginning of the backdate period, i.e., February 1, 2004, per Medicaid Eligibility Management Handbook, App. 23.7.0.

In addition, the institutionalized spouse is supposed to actually transfer title and possession of such assets to the community spouse as soon as practicable after being found eligible under Wisconsin law. See, WI Stat § 49.455(6)(a). Failure to do so may result in the institutional spouse again being found to have a legal interest in such assets after that time has elapsed, adversely affecting his MA eligibility at some later time.

CONCLUSIONS OF LAW

The CSAS for this household shall be increased to \$95,821.03, in order to increase the community spouse's income to a level approaching (but not exceeding) the MMMNA.

NOW, THEREFORE, it is ORDERED

That the petition herein be remanded to the county agency with instructions to: increase the Community Spouse Asset Share to \$95,821.03, for the petitioner's household, effective February 1, 2004; reverse the action denying the petitioner's application for Institutional MA; certify the petitioner as eligible for Institutional MA retroactive to February 1, 2004, pursuant to his May 6, 2004, application and in conformance with Medicaid Eligibility Management Handbook App. 23.7.0, within 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 that 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 6th day of
July, 2004

/s/Kenneth D. Duren
Administrative Law Judge
Division of Hearings and Appeals
31/KDD