



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

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In the Matter of

██████████  
c/o Gwen Kuchevar  
Rodli, Beskar, Boles, et al.  
P O Box 138  
River Falls, WI 54022-0138

DECISION

MRA-55/106

904

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 21, 2009, under Wis. Admin. Code § HA 3.03(1), to review a decision by the St. Croix County Department of Human Services in regard to Medical Assistance, a hearing was held on November 04, 2009, at New Richmond, Wisconsin. The record was left open for 14 days at the petitioner's request.

The issue for determination is whether the agency correctly determined that a person who lives in a community based residential facility is considered to be living in the community and not institutionalized.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████████  
c/o Gwen Kuchevar  
Rodli, Beskar, Boles, et al.  
P O Box 138  
River Falls, WI 54022-0138

Petitioner's Representative:

Attorney Gwen Kuchevar  
219 N. Main St.  
P O Box 138  
River Falls, WI 54022

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53702

By: Heather Genson, ESS

St. Croix County Department of Human Services  
1445 N. Fourth Street  
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED] resides in a community based residential treatment facility in St. Croix County. His spouse resides in their family home.
2. The petitioner applied for medical assistance July 28, 2009, requesting benefits retroactive to April 1, 2009. The county agency denied the request.
3. The petitioner and his wife have over \$3,000 in assets.
4. The petitioner requests that he be considered institutionalized so that the spousal impoverishment rules apply.
5. The petitioner does not participate in any of the MA Waivers programs.

### DISCUSSION

The petitioner lives in a community based residential treatment facility (CBRF) and his wife remains in their family home. He seeks medical assistance, which has an asset limit that varies depending upon whether he is considered to live in the community or in an institution. The asset limit for a married person living in the community is \$3,000, but at least \$52,000 if he is in an institution and his wife remains in the community. See, Wis. Stat. § 49.47(3)(b)3m.e., Wis. Stat. § 49.455, and 42 U.S.C. § 1396. The parties agree that if the lower limit is used the petitioner is ineligible for benefits.

The county agency contends that to be considered institutionalized a person must participate in the MA Community Waivers subprograms or live in a medical institution. *Medicaid Eligibility Handbook*, § 18.2.3. A medical institution is a facility that meets the following criteria:

1. Is organized to provide medical care, including nursing and convalescent care,
2. Has the necessary professional personnel, equipment, and facilities to manage the medical, nursing, and other health needs of patients on a continuing basis in accordance with accepted standards,
3. Is authorized under State law to provide medical care, and,
4. Is staffed by professional personnel who are responsible to the institution for professional medical and nursing services.

*Medicaid Eligibility Handbook*, 27.1.1.

The agency's position that a person in a CBRF is not institutionalized is supported by *Final Decision No. MRA-13/84527* issued Reginald Bicha, the Department's Deputy Secretary. The petitioner acknowledges this, but contends that the decision is wrong because it fails to look at the statutes and administrative code provisions underlying the *Medicaid Eligibility Handbook* policies. He goes on to provide an intricate but coherent legal basis for his contention. Regardless of what I think of his argument, I have no authority to consider it. Decisions by the Deputy Secretary are not infallible but they are binding. Therefore, I must uphold the county agency's decision finding that the petitioner is not institutionalized and thus ineligible for medical assistance because he does not meet the program's asset limit.

### CONCLUSIONS OF LAW

1. The petitioner is not institutionalized.
2. The petitioner's assets exceed the medical assistance program's limit.

**THEREFORE, it is**

**ORDERED**

That the petitioner's appeal is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge 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.

To ask for a rehearing, 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 for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. 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).

For purposes of appeal to Circuit Court, the Respondent in this matter is the Department of Health Services. Appeals must be served on the Office of the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53702

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53

Given under my hand at the City of Eau Claire,  
Wisconsin, this 15th day of December, 2009

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

c:

[REDACTED]