



**STATE OF WISCONSIN  
DEPARTMENT OF HEALTH SERVICES**

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In the Matter of

██████████  
c/o John F. Koenig  
Attorneys at Law  
Suite 200  
6041 Monona Drive  
Monona, WI 53716

DECISION

MRA-11/110436

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The proposed decision of the hearing examiner dated June 1, 2010, is modified as follows and, as such, is hereby adopted as the final order of the Department.

**PRELIMINARY RECITALS**

Pursuant to a petition filed March 19, 2010, under Wis. Stat. § 49.455(8)(a)5. (2007-08) and Wis. Admin. Code § DHS 103.075(8)(a)5. (December 2008), to review petitioner's Community Spouse Resource Allowance ["CSRA"] under the spousal impoverishment rules of the Medical Assistance ["MA"] program, a Fair Hearing was held via telephone on May 21, 2010. At petitioner's request a Hearing scheduled for April 29, 2010 was rescheduled.

The issue for determination is whether, under the spousal impoverishment rules of the MA program, petitioner's Community Spouse Resource Allowance ["CSRA"] may be increased.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████████ (not present at March  
19, 2010 Hearing)  
c/o John F. Koenig  
Kohls & Associates LLC  
Attorneys at Law  
Suite 100  
6041 Monona Drive  
Monona, Wisconsin 53716

Represented by:

John F. Koenig  
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6041 Monona Drive  
Monona, Wisconsin 53716

Wisconsin Department of Health Services  
1 West Wilson Street  
Room 650  
P.O. Box 7850

Madison, Wisconsin 53707-7850

BY: Joseph Ruf III, Corporation Counsel

Columbia County Health and Human Services  
2652 Murphy Road  
P.O. Box 136  
Portage, Wisconsin 53901

**OTHER PERSONS PRESENT:**

██████████ petitioner's husband

Kelly Krueger, ESS

Wendy Metcalf, ES Supervisor

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ██████████ age 90 years) is married and is a resident of Wisconsin; petitioner lives in a nursing home and her husband lives in the community.
2. On or about July 29, 2009 petitioner applied for MA, under spousal impoverishment rules, with the Columbia County Health and Human Services ["County"].
3. By a manual *Negative Notice* dated March 4, 2010 petitioner's MA application was denied due to excess assets.
4. The countable assets of petitioner and her husband include the following 2 life insurance policies:  
(a) a life insurance policy [#7087240] from Thrivent Financial for Lutherans of Appleton, Wisconsin with a cash value in excess of \$10,000.00 that has been decreasing in cash value; (b) another life insurance policy [#FV530453] from the Department of Veterans Affairs with a cash value in excess of \$4,000. Exhibit A.

**DISCUSSION**

Under the normal MA eligibility rules, 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 in the community, 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 still have a spouse living in the community 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 couple's assets and income. See, Wis. Stat. § 49.455 (2007-08);

Wis. Admin. Code DHS § 103.075 (December 2008); *Medicaid Eligibility Handbook* ["MEH"] Chapter 18.

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"]). 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, 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 generate a greater amount of income, which can then be used by the community spouse for living expenses. In this case, petitioner has requested that the CSRA be increased by the Fair Hearing process. See, Wis. Stat. §§ 49.455(6)(b)(3) & (8)(d) (2007-08); Wis. Admin. Code §§ DHS 103.075(8)(a)5. & (8)(d) (December 2008); MEH 18.6.2.Section A1.

However, 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.

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. (2007-08); Wis. Admin. Code § DHS 103.04(2) (December 2008). 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.

In this a case there are two life insurance policies that have not been shown to generate income. In fact, one of the life insurance policies has been decreasing in cash value. The combined cash value of the two life insurance policies is in excess of \$14,000. See, Finding of Fact #4, above.

It must be concluded that the life insurance policies in question here cannot be reallocated.

To support her request for an increased CSRA, Petitioner points to the plain language and the legislative purposes underlying spousal impoverishment laws. Although she is correct about the purpose behind permitting the CSRA to be revised – to raise the community spouse’s income – Petitioner selectively reads the plain language.

42 USC 1396r-5(e)(2)(C) permits raising the CRSA to “an amount adequate to provide” the minimum income level. Similarly, § 49 455(8)(d) allows the CSRA to increase to an amount “that generates enough income to raise the community spouse’s income” to the minimum income allowance. The law clearly contemplates by its wording and intent that the additional resources must add income. A resource that does not produce income cannot help the community spouse to reach the minimum income level.

Petitioner argues that her community spouse should be permitted to hold the insurance policies so he can convert these non-income producing resources to income producing ones when needed.<sup>1</sup> The result of this would be to permit the community spouse to hold resources above the level set by law but not for the allowed purpose (to generate a minimum income level). It would render the resource test moot and circumvent the eligibility structure in spousal impoverishment. Moreover, what would prevent couples from arranging their assets into non- or low-income producing ones and then asserting Petitioner’s position? A sizeable amount of resources could be sheltered, well above the legislatively-set level. Medicaid should not subsidize this practice.

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<sup>1</sup> I note that there is nothing to prevent Petitioner and her spouse from converting the policies now and then reapplying for Medicaid.

**CONCLUSIONS OF LAW**

For the reasons discussed above, petitioners' request to increase the CSRA is denied.

**NOW, THEREFORE, it is**

**ORDERED**

That this petition is herein dismissed.

**REQUEST FOR A REHEARING**

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 rehearing. You may also ask for a rehearing 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 as "PARTIES IN INTEREST" in the proposed decision. 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 Wisconsin Statutes § 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 a rehearing, if you ask for one). The process for Circuit Court is in Wisconsin Statutes §§ 227.52 and 227.53.

You must also serve your appeal either personally or by certified mail on the Respondent, Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703.

The appeal must also be served on the other 'PARTIES IN INTEREST' named in the proposed decision.

Given under my hand at the City of  
Madison, Wisconsin, this 25th  
day of August, 2010.

s/KENNETH MUNSON  
Kenneth Munson, Deputy Secretary  
Department of Health Services