



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MRA - 213308

PRELIMINARY RECITALS

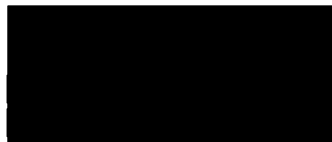
Pursuant to a petition filed on May 6, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Waupaca County Department of Social Services regarding Medical Assistance (MA), a hearing was held on July 17, 2024, by telephone.

The issue for determination is whether petitioner can allocate income to her community spouse under spousal impoverishment rules.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Tressa Nelson

Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waupaca County. She has resided in a CBRF since March 2023.
2. In August 2023 petitioner completed a renewal for her MA.
3. On August 29, 2023 the agency issued petitioner a notice advising that she was open for MA (Community Waivers) effective October 1, 2023 with a copay of \$26. She was considered a Group A member for the Family Care Program at that time.
4. On March 4, 2024 the agency issued petitioner a notice advising that she was open for MA (Community Waivers) effective April 1, 2024 with a copay of \$26. She continued to be a Group A member for the Family Care Program at that time.

DISCUSSION

The Family Care Program (FCP), which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized under Wisconsin Statute, § 46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. The FCP is also referred to as a Community Waivers program, Adult Home and Community-Based Waivers Long-Term Care program, and/or managed long-term care program.

Petitioner is eligible for the FCP. An eligible person's income is reviewed to determine if the recipient has enough income to be responsible for payment of a monthly "cost share." Group A members are functionally eligible and MA eligible via any full-benefit MA subprogram other than Home and Community-Based Waivers MA. See *Medicaid Eligibility Handbook (MEH)* § 28.6.2., available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. Group A members do not have a cost share. Id. Members who have met a deductible are eligible for Community Waivers as a Group A and remain eligible as a Group A until the end of the deductible period. Id. At the next review the member will be able to make a choice between meeting the deductible to receive MA and remain a Group A or become eligible for Community Waivers as a Group B (or B Plus) with a potential cost share. Id. Group B status is available to a person who has gross income below the Community Waivers MA income limit. Id. In this case, petitioner was a Group B member until she had a renewal, her case was updated to show that she moved to a CBRF, and she was changed to a Group A member.

The petitioner's community spouse requests that her case be considered under spousal impoverishment policy and that petitioner be allowed to allocate some of her income to him. The spousal impoverishment policy states:

Spousal impoverishment is a Medicaid policy that allows persons to retain assets and income that are above the regular Medicaid financial limits. Spousal impoverishment policy applies to institutionalized persons. For purposes of spousal impoverishment, an institutionalized person means someone who:

1. Participates in Group B or B Plus Home and Community-Based Waivers, or
2. Has resided in a medical institution for 30 or more consecutive days, or
3. Is likely to reside in a medical institution for 30 or more consecutive days, as attested to by the medical institution, or
4. Is residing in an IMD. There is no 30 day requirement for this population.

Note: An individual is not considered "institutionalized" for purposes of spousal impoverishment if he or she has resided in a medical institution for 30 or more

consecutive days, is likely to reside in a medical institution for 30 or more consecutive days, or is residing in an IMD, and the sole purpose for residing in the medical institution or IMD is to receive residential substance use disorder treatment

The policy's purpose is to prevent impoverishment of the community spouse. A community spouse is:

1. Married to an institutionalized person and
2. Not living in a nursing home or other medical institution for 30 or more consecutive days.

As long as the community spouse is not an institutionalized person residing in an institution, his or her living arrangement can have no effect on his or her asset share (see [Section 18.4.3. Calculate the Community Spouse Asset Share](#)) or income allocation (see [Section 18.6.2 Community Spouse Income Allocation](#)).

Example 1: Joe is an institutionalized person living in a nursing home. His wife, Carla, is receiving HCBW services in a CBRF. Because Carla is not residing in a medical institution, Joe's eligibility is determined using Spousal Impoverishment rules.

Before enactment of the Medicare Catastrophic Coverage Act of 1988, the community spouse was legally obliged to provide financial support to the institutionalized person. After enactment, he or she is allowed to retain additional assets and income without liability for the institutionalized spouse and without affecting the Medicaid eligibility of the institutionalized spouse.

See [Section 2.5.3 Spousal Impoverishment Medicaid Signatures](#) for application and review signature requirements.

MEH, § 18.1.

This policy aligns with the state spousal impoverishment statute, which defines an "institutionalized person" as follows:

"Institutionalized spouse" means either an individual who is in a medical institution or nursing facility and is married to an individual who is not in a medical institution or nursing facility or an individual who receives services under a waiver under 42 USC 1396n(c) or (d) and is married to an individual who is not in a medical institution or nursing facility and does not receive services under a waiver under 42 USC 1396n(c) or (d).

Wis. Stat. § 49.455(d); see also the matching federal law definition at 42 USC § 1396r-5(h)(1).

Because petitioner is not considered "institutionalized" when residing in a CBRF, and is not a Group B or B Plus member, spousal impoverishment policy cannot apply, and therefore no spousal allocation can be allowed.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, [Wisconsin Socialist Workers 1976 Campaign Committee v. McCann](#), 433 F.Supp. 540, 545 (E.D. Wis.1977). In other words, I cannot change the outcome based on a fairness argument. This office must limit its review to the law as set forth in statutes, federal regulations, and

administrative code provisions. She may wish to discuss her options for MA programs with her care team.

CONCLUSIONS OF LAW

Petitioner is not considered institutionalized for spousal impoverishment purposes.

THEREFORE, it is ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

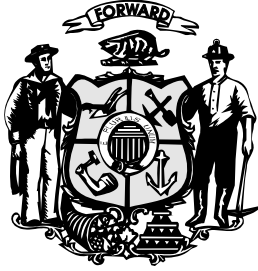
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 31st day of July, 2024

\s _____
Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 31, 2024.

Waupaca County Department of Social Services
Division of Health Care Access and Accountability

