



Rhode Island Executive Office of Health and Human Services  
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May 20, 2015

Docket # 15-282

Hearing Date: April 2, 2015



### **ADMINISTRATIVE HEARING DECISION**

The Administrative Hearing that you requested has been decided in your favor. During the course of the proceeding, the following issue(s) and Agency regulation(s) were the matters before the hearing:

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS)  
MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)  
SECTION 0380 RESOURCES GENERALLY  
SECTION 0392 POST-ELIGIBILITY TREATMENT OF INCOME**

The facts of your case, the Agency regulations, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: Your attorney (the appellant's), and Agency representatives: Cynthia Lopes, and Deborah Castellano, Tom Conlon.

Present at the hearing were: Your wife, your attorney, and Agency representative Cynthia Lopes.

**ISSUE:** Should the Community Spouse Resource Allowance (CSRA) be expanded to include all of the income producing total joint resources that the spouses possess so that the community spouse will be able to adequately support herself in the community?

#### **EOHHS RULES AND REGULATIONS:**

Please see attached APPENDIX for pertinent excerpts from the Rhode Island Executive Office of Health and Human Services Medicaid Code of Administrative Rules (MCAR).

#### **DISCUSSION OF THE EVIDENCE:**

**The DHS Agency representative testified:**

- There was an application received on December 29, 2014, but the case had been assigned to a social case worker who then left her position. A second application was submitted but we used the original application date and denied the case for the same reason on January 5, 2015.
- The Agency met with the attorney and sorted through the case when an appeal was filed.
- An MA-4 had been completed by the previous worker.
- She had established the POCI (point of continued institutionalization) as September 1, 2014.
- She had reallocated the information again at the point the new application was resubmitted. She still determined that the client would have to spend down \$49,491.24.
- She completed an MA-2, and listed all the assets owned by the client and his wife together. The attorney has not yet signed this, but it's assumed that he received it and is agreeing with all the assets.
- We allocate information into the IN-Rhodes system, with regards to the Community spousal resources allowance (CSRA).
- At the time this was completed previously, the institutionalized spouse owned a couple of IRA's which should not have been countable and should not have been counted on our system.
- In looking at the case again, the IRA's are not countable unless he starts taking the required distribution. He is not at the age of 70 ½ so he's not required to start taking distributions so they should have been allocated to his spouse.
- We're starting to work in the case again, and we're starting to reallocate the resources in the way the Department policy indicates that we should. This can be seen in the documents presented which show that her (community spouse's) name is now on the paperwork.
- I'm still working on his insurance policy, but I cannot change this.
- The Agency is submitting paperwork to prove that the notice was correct based on what was put in originally.
- At this point the case had been denied again in January, and there became another issue on the table. Because the spouse is not gainfully employed and she had been living in the home and taking care of her husband, the attorney

requested that the Department also consider the minimum monthly maintenance needs allowance (MMMNA) for the client.

- The maximum amount of the MMMNA is the \$1966 and change.
- At that time the Agency stopped all processing on the file to allow the hearing so that we could discuss being over the resource guidelines, and so that the hearing officer could entertain whether or not we could allow the spouse to obtain the maximum MMMNA.
- The Agency is going to meet with the attorney immediately and will start the process of reapplying for him (the applicant).
- That new discussion will be based upon the cash surrender value of the life insurance policy, but it will also be based upon what was presented at the time of the application.

**The attorney and the appellant testified:**

- She (community spouse) is married to the institutionalized spouse.
- She has been caring for him since about 2004 when he started becoming ill.
- He is currently at [REDACTED] Nursing home.
- She last worked June 21, 2002 when she was let go do to problems within the company.
- She just turned 59, her health is good, and has not worked from 2002 to the present, and does not anticipate going back to work.
- She has no income to maintain the home.
- She does not collect social security.
- She needs at least \$2300 per month to run the home.
- She could only provide for herself if she had the maximum of \$1966 and then some in order to survive until she can collect social security.
- The appellant's attorney stipulates to receiving the MA-2, and agrees to all the assets listed and all the accounting figures used.
- He is in agreement that the only decision needed at this time, is if she (the community spouse) can receive the maximum minimal needs allowance.

## **FINDINGS OF FACT:**

- The MA-4 identifies that the institutionalized spouse applied for MA LTC benefits on September 1, 2014.
- The applicant's first month of continuance institutionalization is September 2014.
- The total joint resources as of the first of the month of institutionalization were \$106,982.48.
- The CSRA (community spouse resource allowance) was determined to be \$53,491.24.
- The community spouse has total gross monthly income of \$0.00.
- On January 9, 2015 the MA-4 indicated that at the time of application the institutionalized spouse was over the MA resource limit by \$49,491.24.
- A request for hearing, dated January 26, 2015 was filed on behalf of the community spouse who seeks an increase in the CSRA.
- A hearing was held on April 2, 2015.
- The record of hearing was extended until April 30, 2015 for additional evidence.
- Additional evidence was received.
- According to the MA-4 the community spouse has a monthly excess shelter allowance of \$394.15 which when added to the basic standard allowance of \$1966.25 allows her a total minimal monthly maintenance needs allowance (MMMNA) of \$2360.40.
- The couple's income producing resources earn a monthly income of \$7.64.
- The community spouse's income (\$0.00) combined with the monthly income allowance made available by the institutionalized spouse (\$1894.90) plus the monthly income generated from the assets (\$7.64) is equal to \$1902.54 which does not meet her MMNA of \$2360.40.
- The community spouse has a shortfall of \$457.86.

## CONCLUSION:

The issue to be decided is whether the Community Spouse Resource Allowance (CSRA) should be expanded to include all of the income producing total joint resources that the spouses possess so that the community spouse will be able to adequately support herself in the community.

According to the MA-4 submitted by the Agency, the applicant became institutionalized and applied for MA in September 2014. As of September 1, 2014 the total resource amount was \$106,982.48. \$53,491.24 was attributed to the community spouse and the remaining \$53,491.24 was attributed to the institutionalized spouse resulting in ineligibility for MA because his amount exceeded the \$4000.00 MA resource limit.

The appellants' Attorney argues that the community spouse's income combined with the monthly income allowance made available by the institutionalized spouse is insufficient to meet her needs. He argues that the income falls short of the community spouses MMMNA. He asks that all of the joint income producing resources be allocated to the community spouse so she can support herself in the community.

Exploration of Medicaid regulations defines that either the institutionalized spouse or community spouse dissatisfied with the spousal share of the joint resources, the attribution of resources, or the determination of the community spousal resource allowance, is entitled to a fair hearing. If it is determined that the community spouse resource allowance is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, an amount adequate to provide such an allowance shall be substituted for the current community spouse resource allowance (CSRA). The Hearing Officer considers the existing income-the monthly income allowance made available to the institutionalized spouse. Additional resources considered must be income producing.

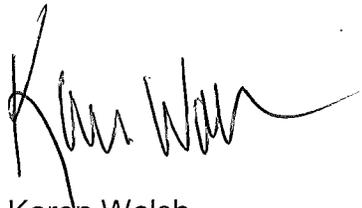
There is no dispute between the Agency and the spouses that the community spouse's shelter expenses totaled \$984.03 with an excess shelter allowance of \$394.15, a standard allowance of \$1966.25, all of which was calculated to determine a MMMNA of \$2360.40. The community spouse has a total income of \$0.00, which in combination with the total monthly income allowance made available by the institutionalized spouse (\$1894.90) is equal to \$1894.90. That figure is \$465.50 less than her MMMNA. The MA-2 statement of resources entered into evidence establishes 7 Bank of America accounts which include one money market account, a checking account, and 5 "other" accounts. The document establishes as well, a \$10,862 cash value life insurance policy-all of which total \$106,982.48, the total resource amount established by the MA-4 submitted. Post hearing, the appellants Attorney also submitted a copy of a 1099 Bank of America 2014 statement which identified that three of the accounts-the Money Market account [REDACTED] (\$50,031.37), the "Other" account [REDACTED] (\$41,030.82), and an account ending in [REDACTED] (\$3.58) are interest bearing accounts which cumulatively generate an average of

\$7.64 per month. The community spouse's income of \$1894 plus the \$7.64 in generated income still falls short of her MMMNA of \$2360.04.

In summary, the community spouse has demonstrated that she is in need of all of the total joint income-producing resources that the couple possessed at the time of the institutionalization and application for MA in September 2014. In order to raise the community spouse's income, the income producing resources are considered exempt, and may be allowed for her use. This Hearing Officer authorizes an expansion of the CSRA to include the three income producing bank accounts. The appellant's request to authorize an expansion of the CSRA is granted.

**ACTION FOR THE AGENCY:**

The appellant's application is to be processed from September 1, 2014 the first of the month in which the institutionalized spouse applied for the program. The Agency is to attribute all of the stated income producing joint resources to the community spouse as noted on the Agency MA-4 dated January 9, 2014.

A handwritten signature in black ink, appearing to read "Karen Walsh", with a long, sweeping horizontal stroke extending to the right.

Karen Walsh  
Appeals Officer

**APPENDIX**

## **MEDICAID CODE Of ADMINISTRATIVE RULES (MCAR)**

### **0380 Resources Generally**

#### **0380.05 Resource Limits**

REV: 06/1994

For Medicaid Resource eligibility to exist, the institutionalized individual's countable resources cannot exceed the following basic limits:

- For Categorically Needy eligibility - \$2000
- For Medically Needy eligibility - \$4000

The evaluation of resources of an institutionalized individual with a community spouse first determines:

- The total joint resources of a couple;
- The spousal share of resources; and
- The community spouse resource allowance.

The computation of the community spouse resource allowance is based on the couple's total joint resources and the spousal share of those resources as of the first moment of the month in which the period of continuous institutionalization begins.

Except for the community spouse resource allowance, the total joint resources of a married couple with an institutionalized spouse are deemed available to the institutionalized spouse for purposes of Medicaid eligibility.

Each determination of eligibility (new, reopening or redetermination) requires a review of resources, which includes sending three bank statements (AP-91). Resources are also reviewed at the time of a reported change, or when information is received which indicates a change has occurred, or that unreported resources may exist (Income Eligibility Verification System match, etc.).

Resources must be verified by a review of documents related to the resource, with copies of the documentation kept for the case file

#### **0380.40 Countable Resources, Institutional Spouse**

REV: 06/1994

The evaluation of resources of an institutionalized spouse with a community spouse first determines:

- The total joint resources of the couple; then
- The spousal share of the resources; and
- The community spouse resource allowance.

The computation of the community spouse resource allowance is based on the couple's total joint resources at the beginning of the period of continuous institutionalization.

The total joint resources of the married couple with an institutionalized spouse are deemed available to the institutionalized spouse for the purpose of eligibility determination.

##### **0380.40.10 Spousal Share**

REV: 06/1994 The spousal share is equal to one-half of the value of the couple's total joint resources as of the beginning of a period of continuous institutionalization. The value of the spousal share remains fixed at the value computed as of the beginning of the period of continuous institutionalization, regardless of changes in resources which may occur between the beginning period of institutionalization and the time of the Medicaid eligibility determination.

### **0380.40.35 Fair Hearing**

REV: 06/1994

If either the institutionalized spouse or the community spouse is dissatisfied with the spousal share of the joint resources, the attribution of resources, or the determination of the community spouse resource allowance, and if an application for Medicaid has been made on behalf of the institutionalized spouse, the dissatisfied spouse is entitled to a fair hearing.

Section 1924 (e) (2) (C) of the Social Security Act provides State Hearing Officers authority to raise the community spouse resource allowance (CSRA) under certain circumstances. If either the community spouse or the institutionalized spouse establishes that the community spouse resource allowance is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, an amount adequate to provide such a minimum monthly maintenance needs allowance (under the post-eligibility formula) shall be substituted for the current community spouse resource allowance. In determining how much more income must be generated by the additional resources in order to raise the community spouse's income to the minimum maintenance allowance, the Hearing Officer considers the community spouse's existing income. Existing income for this purpose includes the monthly income allowance which the institutionalized spouse has made available to the community spouse under the post-eligibility formula. There can be no substitution for the current community spouse resource allowance if the institutionalized spouse does not actually make a monthly income allowance available to the community spouse under the post-eligibility formula. The additional resource(s) above the CSRA which may be protected under this section of the Social Security Act must be income-producing. To be protected, the income producing resource must be providing a reasonable rate of return.

The hearing must be held within thirty days of receipt by the agency of a written request for a hearing.

### **0392 Post-Eligibility Treatment of Income**

#### **0392.05 Overview**

REV: 06/1994

Institutionalized Medicaid recipients are required to apply their income toward the cost of institutional care. Once Categorically Needy or Medically Needy eligibility has been established, and the applicant has been determined eligible for payment of institutional care services, a determination is made of the amount of income that the institutionalized individual must allocate to the cost of care. The individual may protect certain prescribed amounts of income for specific needs. ONLY the prescribed amounts for the specific purposes may be protected. ALL of the institutionalized individual's remaining income must be used to reduce the Medicaid payment for institutional care. The applicant's income, protected amounts, and allocation to the cost of care are computed on a monthly basis.

The policy in this section applies to individuals who reside in nursing facilities and public medical facilities. See Section 0396 for the specific post-eligibility policies which apply to individuals who receive home and community based services under a waiver. For eligibility determination purposes, children receiving Medicaid under the "Katie Beckett" provisions are considered to be institutionalized. However, "Katie Beckett" eligible children are not subject to the post-eligibility process since only regular covered medical services are provided.

### **0392.15 Income Applied to Cost of Care**

REV: 06/1994

For each month in which Medicaid is requested to pay for the individual's institutional care, the individual must contribute his/her income to pay for institutional services, deducting only certain allowable amounts. The individual's income remaining after allowable deductions is paid to the institution as his/her contribution to the cost of the institutional care. Such income is known as APPLIED INCOME. The Medicaid payment to the institution is reduced by the applied income amount.

The calculation of applied income starts with the individual's gross income, which includes the deduction and disregard amounts which were subtracted from gross income in the determination of eligibility. To determine applied income, certain allowable deductions are subtracted from the recipient's gross income. The deductions, and the order in which they are subtracted from the recipient's gross income, are:

- Personal Needs Deduction (Regular) or \$90 Reduced Pension Deduction;
- Personal Needs Deduction (Expanded);
- Personal Needs Deduction (Guardian and Legal);
- Community Spouse Allowance;
- Community Dependent Allowance;
- Medical Insurance Premiums;
- Medical/Remedial Items;
- Home Maintenance Deduction;
- First/Last Month Institutionalization Expenses

### **0392.15.20 Community Spouse Allocation**

REV: 01/2014

Rhode Island is an income first state in which the income is first examined as part of the allocation. If the institutionalized individual has a community spouse, the individual may wish to allot an amount to the community spouse for his/her support. In reviewing for eligibility, DHS must consider all the income of the institutionalized spouse that could be made available to a community spouse has been made available before DHS allocates to the community spouse an amount of resources adequate to provide the difference between the minimum monthly maintenance needs allowance and all income available to the community spouse. This is applicable to individuals who became institutionalized individuals on or after February 8, 2006. Reference is made to applying this Section to fair hearings, as found in Section 0380.40.35. The amount of the community spouse allocation is based on the income already available to the community spouse. Thus, the calculation of this allocation is preceded by a determination of the community spouse's income.

If the institutionalized individual has a community spouse and other community dependents, s/he may choose in addition to the community spouse and can allocate only to his/her dependents.

The maximum amount that may be taken from an institutionalized individual's income for the support of a spouse and dependents in the community is \$ 2,931.00 per month, except:

- In the case of a court order for spousal support; or
- In the case of a court order or a finding by an administrative hearing.

The allocation to community spouse is based upon the gross income otherwise available to the community spouse. The income of the community spouse is determined in the same manner as gross income for purposes of eligibility determination. No disregards or deductions are applied to the community spouse's gross income in determining the allocation from the institutionalized spouse.

### **0392.15.20.05 Calculation of Community Spouse Allocation**

REV: 08/2013 July 2014

The calculation of the community spouse allowance considers the following: • The community spouse's gross income; and

- The spouse allowance which consists of two parts, the basic allowance and the excess shelter allowance.

The BASIC ALLOWANCE to a community spouse with no other income is \$1,938.75 \$1966.25 per month.

An EXCESS SHELTER ALLOWANCE is added to the basic spouse allowance if the community spouse's shelter expenses exceed \$581.63 \$589.88 per month.

**0392.15.20.10 Excess Shelter Allowance**

REV: 08/2013 July 2014

The excess shelter allowance is the amount by which the community spouse's shelter expenses exceed \$581.63 \$589.88 monthly.

Only shelter expenses relating to the community spouse's principal place of residence may be used to calculate the excess shelter allowance.

Shelter expenses are defined as and limited to:

- Rent;
- Mortgage payment (including principal and interest), taxes and insurance and, in the case of a condominium or cooperative, required maintenance charge;
- The STANDARD UTILITY ALLOWANCE, as updated annually in Sec. 1038.20.05 of the SNAP Manual (Standard Utility Allowance), regardless of the actual utility costs, IF utility costs are incurred by the community spouse.

If the total allowable monthly shelter expenses are less than \$581.63 \$589.88 there is no excess shelter allowance. The amount of shelter costs that EXCEEDS \$581.63 \$589.88 is the excess shelter allowance.

- The community spouse's gross income; and
- The spouse allowance which consists of two parts, the basic allowance and the excess shelter allowance.

The BASIC ALLOWANCE to a community spouse with no other income is \$1,938.75 \$1966.25 per month.

An EXCESS SHELTER ALLOWANCE is added to the basic spouse allowance if the community spouse's shelter expenses exceed \$581.63 \$589.88 per month.

## **NOTICE OF APPELLATE RIGHTS**

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.