

CR 91-114

CERTIFICATE

STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Gerald Whitburn, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to spousal impoverishment prevention in connection with determination of eligibility for Medical Assistance were duly approved and adopted by this Department on January 15, 1993.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 15th day of January, 1993.



SEAL:

\_\_\_\_\_  
Gerald Whitburn, Secretary  
Department of Health and Social Services

**RECEIVED**

JAN 15 1993  
4:00 pm  
Revisor of Statutes  
Bureau

4-1-93

ORDER OF THE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING,  
AND CREATING RULES

To repeal HSS 103.09(2)(a); to renumber and amend HSS 103.09(2)(b); to amend HSS 101.03(8), (23), (93) and (97), 102.01(7), 103.01(1)(a), 103.03(1)(b)1, 2 and 4, (2), (3)(b) and (9), 103.04(4)(intro.), 103.06(1)(b)1, 103.065(2), (3)(a) and (4)(a), 103.07(1)(a)3, (b)(intro.), (c)3 and (d)(intro.), 103.08(4) and 103.09(3)(a); to repeal and recreate HSS 103.03(4), 103.06(4)(b), 103.07(1)(d)1 and 103.09(3)(b); and to create HSS 103.065(4)(am), 103.07(2)(i), 103.075 and 103.09(3)(c), relating to eligibility for Medical Assistance.

Analysis Prepared by the Department of Health and Social Services

To be eligible for Medical Assistance (MA) under ss.49.43 to 49.497, Stats., and chs. HSS 101 to 108, an applicant or recipient must meet certain income and asset limits. Until recently, all of the nonexempt assets belonging to a person who entered a nursing home as well as assets jointly owned with his or her spouse were considered in determining the institutionalized person's MA eligibility. In addition, all of the institutionalized person's nonexempt income was considered in determining eligibility and in computing his or her contribution to the cost of the institutional care with only a small portion set aside for the needs of the spouse who remained in the community. In many cases this small amount was not adequate to provide for the maintenance needs of the community spouse.

To prevent impoverishment of the community spouse, Congress as part of the Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360) created a new s.1924 of the Social Security Act. Under Section 1924 states set special asset limits for MA eligibility for applicants and recipients who are legally married when one spouse is either in a medical institution or nursing home or receiving home and community-based care as an alternative to being in a nursing home, and the other spouse is not in a medical institution or nursing home or participating in a home and community-based care waiver program such as the Community Integration Program under s.46.277, Stats. These asset amounts are much larger than those used in determining MA eligibility for other individuals. Section 1924 of the Social Security Act also provides for protection of a portion of the income and assets of a couple needed for the maintenance of the community spouse and certain other family members when the other spouse is a medical institution or nursing home resident or participating in a home and community-based care waiver program. In determining eligibility for the institutionalized spouse, up to \$68,700 (the amount as of January 1, 1992) of the value of the couple's countable assets can be set aside for the maintenance needs of the community spouse. In addition, a portion of the institutionalized spouse's income can be reserved for the

maintenance needs of the community spouse and any dependent family members. In Wisconsin the spousal impoverishment prevention program was implemented on October 1, 1989, under the authority of s. 49.455, Stats.

This rulemaking order consists of rules for administration of the spousal impoverishment prevention program, s.HSS 103.075, and related amendments to chs. HSS 101 to 103, as well as several unrelated amendments to chs. HSS 101 to 103 which are meant to bring provisions in those chapters into conformity with recent changes in state statutes and changes or clarification in federal requirements and to reflect other changes that have taken place in practice and terminology. Although s.49.455, Stats., is quite detailed, rules for administration of the spousal impoverishment prevention program are required under s.3023(19) of 1989 Wisconsin Act 31. The rules add definitions for "continuous period of institutionalization" and "medical institution," clarify several statutory provisions and provide direction to income maintenance agencies on administration of the spousal impoverishment prevention program.

Other amendments to chs. HSS 101 to 103 being made through this rulemaking order concern how net proceeds from the sale of homestead property are to be treated and the temporary continuation of eligibility for MA after loss of eligibility for Aid to Families with Dependent Children (AFDC). In addition, s.HSS 103.06(1)(b)1 is being amended to reflect current policy found in the MA Handbook regarding the exemption of a home when a dependent relative is residing in the home. The definition of dependent relative conforms to that used in the Supplemental Security Income (SSI) program as required under section 1902(a)(1)(C)(i)(III) of the Social Security Act which requires states to apply asset consideration methodology that is no more restrictive than the cash assistance programs, i.e., Aid to Families with Dependent Children (AFDC) and SSI.

The Department's authority to amend and create these rules is found in s.49.45(7)(a), (10) and (17)(d), Stats., and s.3023(19) of 1989 Wisconsin Act 31. The rules interpret ss. 49.13, 49.45(2)(a)3 and (b)1, (17) and (19), 49.455, 49.46 and 49.47, Stats.

SECTION 1. HSS 101.03(8), (23), (93) and (97) are amended to read:

HSS 101.03(8) "Agency" means the county department of social services, public welfare or human services, or a tribal agency which administers income maintenance programs.

(23) "Categorically needy" means the group of persons who meet the nonfinancial and financial eligibility conditions to be eligible for the AFDC program or the SSI program.

(93) "Legally responsible" means liable a spouse's liability for the support of a person spouse or a parent's liability for the support of a child as specified in s.52.01 49.90, Stats.

(97) "Medically needy" means the group of ~~recipients~~ persons who meet the ~~non-financial~~ nonfinancial eligibility conditions for AFDC or SSI, but whose income exceeds the financial eligibility limits for those programs.

SECTION 2. HSS 102.01(7) is amended to read:

HSS 102.01(7) SIGNING THE APPLICATION. Each application form shall be signed by the applicant or the applicant's caretaker relative, defined under s. HSS 201.03(5)(6), legal guardian ~~or~~, authorized representative or, where the applicant is incompetent or incapacitated, by someone acting responsibly for the applicant. When an institutionalized person who is applying for MA or an institutionalized recipient whose eligibility for MA is being redetermined has a community spouse, both the institutionalized spouse and his or her spouse, their authorized representatives or someone acting responsibly for the institutionalized spouse or his or her spouse shall sign the application form. Failure of either spouse or that person's authorized representative or someone acting responsibly on behalf of either spouse to sign the application form shall result in ineligibility for the institutionalized spouse under s.HSS 103.075. Except as provided under s.HSS 103.075(5)(e), the agency shall proceed to determine eligibility for the institutionalized spouse under s.HSS 103.04(4). The application shall be signed in the presence of an agency representative except when an institution superintendent makes application for public assistance on behalf of a resident pursuant to s. 49.13(1), Stats. The signatures of 2 witnesses are required when the application is signed with a mark. In this subsection, "community spouse" and "institutionalized spouse" have the meanings prescribed in s.HSS 103.075(3)(a) and (e).

SECTION 3. HSS 103.01(1)(a) is amended to read:

HSS 103.01 (1) PERSONS ELIGIBLE. (a) Eligibility for medical assistance (MA) shall be determined pursuant to ~~ss.49.455, 49.46 (1) and 49.47(4), Stats.,~~ and this chapter, except that MA shall be provided without eligibility determination to persons receiving AFDC or SSI.

SECTION 4. HSS 103.03(1)(b)1, 2 and 4, (2) and (3)(b) are amended to read:

HSS 103.03(1)(b)1. The person is pregnant and meets the conditions specified in s.49.46(1)(a)1m or 9, 49.465 or 49.47(4)(a)2 or (am)1, Stats.;

2. The person is a dependent child as defined in s.49.19(1)(a), Stats., or is a child who meets the conditions specified in s.49.46(1)(a)10 or 49.47(4)(a)(1) or (am)2, Stats.;

4. The person is a foster child under 19 years of age living in a foster home licensed under s.48.62, Stats., or a group home licensed under s.48.625, Stats., or is a child in a subsidized adoption an adoption assistance placement under s.48.975, Stats.

(2) CITIZENSHIP. U.S. citizenship shall be a requirement for eligibility for MA, except that an alien lawfully admitted for permanent residency may be eligible, including an alien lawfully present in the United States as a result of s.203(a)7 (8 USC 1153), 207(c) (8 USC 1157), 208 (8 USC 1158) or 212(d)5 (8 USC 1182) of the immigration and nationality act, an alien granted lawful temporary resident status under s.245A (8 USC 1255a), 210 (8 USC 1160) or 210A (8 USC 1161) of the immigration and nationality act or an alien otherwise permanently residing in the United States under color of law within the meaning of 42 CFR 435.402 435.408. An alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law may not receive medical assistance benefits except as provided under 8 USC 1255a(h)(3) or 42 USC 1396b(v).

(3)(b)Physical presence and intention. An eligible person shall be a Wisconsin resident, as determined under 42 CFR 435.403. Residence shall be based on physical presence, except as provided in an interstate agreement, and on the person's stated intent to maintain Wisconsin residence indefinitely, except as otherwise provided in pars. (c) to (g).

SECTION 5. HSS 103.03(4) is repealed and recreated to read:

HSS 103.03(4) FURNISHING OF A SOCIAL SECURITY NUMBER. (a) All individuals for whom MA benefits are requested shall have a social security number and shall furnish the number to the agency, except an individual who is one of the following:

1. An alien who is requesting medical assistance only for emergency services; or

2. A child who is eligible for medical assistance under 42 USC 1396a(e)(4). During the time that the child is eligible under 42 USC 1396a(e)(4), the agency shall use the mother's social security number.

(b) If an applicant does not have a social security number, application for the number shall be made by or on behalf of the applicant to the federal social security administration. If there is a refusal to furnish a number or apply for a number, the

person for whom there is a refusal is not eligible for MA. The department may not deny or delay services to an otherwise eligible applicant pending issuance or verification of the individual's social security number.

SECTION 6. HSS 103.03(9) is amended to read:

HSS 103.03(9) NOT A STRIKER. A person on strike is not eligible. When the striker is a caretaker relative, all members of the MA group who are 18 years of age or older shall be ineligible except that if the member of the MA group who is on strike is medically verified pregnant or, if the MA group includes a medically verified pregnant woman, the pregnant woman continues to be eligible during her pregnancy and through the month in which the 60th day following the end of pregnancy falls. In this subsection, "striker" means anyone who on the last day of the month is involved in a strike or a concerted effort with other employes to stop work, including a stoppage of work due to the expiration of a collective bargaining agreement, or any concerted slowdown or other concerted interruption of operations by employes.

SECTION 7. HSS 103.04(4)(intro.) is amended to read:

HSS 103.04(4) SPECIAL FINANCIAL STANDARDS FOR INSTITUTIONALIZED PERSONS. (intro.) The categorically needy and medically needy asset standards shall be the same for institutionalized persons as for non-institutionalized persons, except that in determining initial eligibility under s.HSS 103.075 for an institutionalized individual with a community spouse the asset standard shall be the regular SSI-related MA group size one asset standard as provided under s.49.47(4)(b)3g, Stats., plus the community spouse resource allowance as provided under s.49.455(6)(b), Stats. The eligibility standards against which an institutionalized person's income is tested shall be the following:

SECTION 8. HSS 103.06(1)(b)1 is amended to read:

HSS 103.06(1)(b)1. The institutionalized person's home is currently occupied by the institutionalized person's spouse, ~~child who is under age 18, or child who is 18 years or older and who is developmentally disabled or a dependent relative.~~ In this subdivision, "dependent relative" means a son, daughter, grandson, granddaughter, stepson, stepdaughter, in-law, mother, father, stepmother, stepfather, grandmother, grandfather, aunt, uncle, sister, brother, stepbrother, stepsister, halfsister, halfbrother, niece, nephew or cousin who is financially, medically or otherwise dependent on the institutionalized person;

SECTION 9. HSS 103.06(4)(b) is repealed and recreated to read:

HSS 103.06(4)(b) Net proceeds from the sale of homestead property shall be treated as assets as follows:

1. For AFDC-related MA the proceeds are considered available assets in the month of receipt and, if retained, in any of the following months; and

2. For SSI-related MA the proceeds are disregarded if they are placed in an escrow account and used to purchase another home within 3 months. After 3 months the proceeds are considered available.

SECTION 10. HSS 103.065(2), (3)(a) and (4)(a) are amended to read:

HSS 103.065(2) PURPOSE. This section implements s.49.45(17), Stats., which provides for a period of restricted MA coverage when an individual who is institutionalized or becomes institutionalized, or the individual's spouse disposes of a resourcee resources at less than fair market value.

(3)(a) "Community spouse" means a person who is legally married as recognized under state law to an institutionalized individual but is not himself or herself an institutionalized individual.

(4)(a) Divestment resulting in ineligibility. An institutionalized individual or someone acting on behalf of that individual who disposes of a ~~resourcee resources~~ at less than fair market value within 30 months immediately before or at any time after the individual becomes institutionalized if the individual is receiving MA on the date he or she becomes institutionalized or, if the individual is not a ~~recipient~~ receiving MA on that date, within 30 months immediately before or at any time after the date the individual applies for MA while institutionalized, shall be determined to have divested. A divestment results in ineligibility for MA for the institutionalized individual unless made to an exempt party under par. (b) or (c) or when one of the circumstances in par. (d) exist. An institutionalized individual may also be determined ineligible for MA if his or her spouse ~~diposes~~ disposes of a ~~resourcee resources~~ at less than fair market value on or after July 1, 1990. In this paragraph, "receiving" means entitled to receive as well as actually receiving, in the same way that "recipient" as defined in s.HSS 101.03(150) means a person who is entitled to receive benefits under MA as defined under s.HSS 101.03(95).

Note: The department advises that when the transfer for less than fair market value has been made by the spouse of the

institutionalized applicant or recipient, the determination of whether or not the transfer will be treated as a divestment will be made pursuant to both the divestment provisions under s.49.45(17), Stats., and the spousal impoverishment prevention provisions under s.49.455, Stats.

SECTION 11. HSS 103.065(4)(am) is created to read:

HSS 103.065(4)(am) In determining the amount of the divestment to be satisfied, the agency shall consider all transfers by either the institutionalized individual or his or her community spouse at less than fair market value that occur within a calendar month as one divestment.

SECTION 12. HSS 103.07(1)(a)3, (b)(intro.), (c)3 and (d)(intro.) are amended to read:

HSS 103.07(1)(a)3. The agency shall decide if the spouse of an institutionalized applicant or recipient should be referred for support action under s.~~52.01~~ 49.90, Stats. When deciding whether to refer for support action, the agency shall consider the spouse's basic essential needs and present and future expenses. In no case may support from the spouse of an institutionalized applicant or recipient be pursued when the spouse's assets, not counting homestead property and a motor vehicle, or, if applicable, not counting assets excluded under s.HSS 103.075(5)(a)2, are less than \$1,500 the amount provided under s.49.47(4)(b)3g, Stats., or, if applicable, the spousal asset share under s.49.455(6)(b), Stats., and when the spouse's income is less than monthly need as specified in par. (b)1 and 2 the spousal monthly income allowance under s.49.455(4)(b), Stats.

(b) Allocation of institutionalized person's income to dependents outside the institution. (intro.) ~~No~~ Except as provided under s.HSS 103.075(6), no allocation may be made from an institutionalized applicant's or recipient's income to a spouse who is eligible for SSI but who refuses to obtain SSI. ~~No~~ Except as provided under s.HSS 103.075(6), no allocation may be made to a spouse or to minor children under the spouse's care if the spouse or any of the children are receiving AFDC or SSI. Otherwise, allocations shall be made as follows:

(c)3. If the combined income of both spouses exceeds total need, separate determinations shall be made. Only the actual amount of income made available from one spouse to the other may be used in determining the eligibility of the other spouse. If the spouse refuses to make a reasonable amount available, the agency shall review the case under par. (a)3 to determine if legal action for support should be taken pursuant to s. ~~52.01~~ 49.90, Stats.



(d) Computing income available towards cost of care.  
 (intro.) Institutionalized recipients of MA who are determined eligible under s.HSS 103.06 and this section shall apply their available income toward the cost of their care after deducting the income disregards in this paragraph. In this paragraph, "available income" means any remaining income after the following reductions are made:

SECTION 13. HSS 103.07(1)(d)1 is repealed and recreated to read:

HSS 103.07(1)(d)1. A personal needs allowance, as provided under s.49.45(7)(a), Stats., and

SECTION 14. HSS 103.07(2)(i) is created to read:

HSS 103.07(2)(i) Interest income. 1. Interest income shall be counted as unearned income when:

- a. It is received on a regular basis; and
- b. It exceeds \$20.00 per month. Amounts of \$20.00 or less are considered inconsequential income and are disregarded.

2. The interest shall be counted as income in the month in which it is received. Interest income that is received less often than monthly shall be prorated over the period the payment covers.

SECTION 15. HSS 103.075 is created to read:

HSS 103.075 PREVENTION OF SPOUSAL IMPOVERISHMENT.

(1) APPLICABILITY. For resource eligibility, this section applies to all institutionalized applicants for and recipients of MA who began a continuous period of institutionalization on or after September 30, 1989, and to their spouses. For purposes of computing income available towards the cost of an institutionalized individual's care, this section applies to all institutionalized applicants for and recipients of MA who were residing in an institution on October 1, 1989, or who entered an institution subsequent to that date, and to their spouses.

(2) PURPOSE. This section implements s.49.455, Stats., which provides for protection of a couple's income and resources when one spouse is institutionalized and the other spouse lives in the community.

(3) DEFINITIONS. In this section:

(a) "Community spouse" means an individual who is legally married as recognized under state law to an institutionalized

spouse but is not himself or herself an institutionalized individual.

(b) "Consumer price index" means the consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor.

(c) "Continuous period of institutionalization" means an individual has resided in or is likely to remain in an institution for at least 30 consecutive days.

(d) "Family member" means a minor or dependent child, dependent parent or dependent sibling of an institutionalized or community spouse who resides with the community spouse.

(e) "Institutionalized spouse" means either an individual who is in a medical institution or nursing facility and is legally 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 legally 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).

(f) "Medical institution" means a facility that:

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 care needs of patients on a continuing basis in accordance with accepted professional standards;

3. Is authorized under state law to provide medical care; and

4. Is staffed by professional personnel who are responsible for professional medical and nursing services. The professional medical and nursing services shall include adequate and continual medical care and supervision by a physician, registered nurse or licensed practical nurse supervision and services and nurses' aide services sufficient to meet nursing care needs and a physician's guidance on the professional aspects of operating the institution.

(g) "Resources" does not include items excluded under 42 USC 1382b(a) or (d) or items that would be excluded under 42 USC 1382b(a)(2)(A) but for the limitation on total value established under that provision.

(4) ASSESSMENT. (a) An institutionalized spouse or the community spouse, or a representative acting on the behalf of either spouse, may request that an agency complete an assessment of the couple's assets for purposes of determining total countable assets of the couple and the community spouse resource allowance. If the request is not part of an application for medical assistance, the agency may charge a fee not exceeding the reasonable expenses of providing and documenting the assessment.

(b) Both the institutionalized spouse and the community spouse shall verify the assets that they own, jointly or individually, and the value of those assets at the beginning of the most recent continuous period of institutionalization.

(c) The agency shall:

1. Complete the assessment within 30 days after the date of the request for an assessment;

2. Determine and verify the total countable assets of the couple using the procedures under sub. (5)(b)2;

3. Determine the community spouse resource allowance pursuant to s.49.455(6)(b), Stats.; and

4. Notify in writing the institutionalized spouse and the community spouse, or a representative acting on the behalf of either spouse, of the couple's total countable assets, the community spouse resource allowance and the amount of assets that the couple may retain so that the institutionalized spouse may be asset-eligible for MA and of the right of either spouse to a fair hearing under sub. (8) after an application for medical assistance is filed.

(5) ASSETS. (a) Applicability. This subsection applies only to individuals who began their most recent continuous period of institutionalization after September 29, 1989. Those individuals who began their most recent continuous period of institutionalization before September 30, 1989, shall have their eligibility determined using asset eligibility criteria under s.HSS 103.06(1) unless the individual left the institution or lost eligibility for a community-based services waiver program under 42 USC 1396n(c) or (d) for a period of at least 30 days and subsequently began a new continuous period of institutionalization after September 29, 1989.

(b) Eligibility determination. 1. 'Initial determination'. The agency shall consider the total countable assets of the institutionalized spouse and his or her community spouse in determining initial MA eligibility for the institutionalized spouse.

2. 'Total countable assets'. The agency shall count all available assets belonging to either spouse in the month for which eligibility is being determined except for the following:

- a. Homestead property;
- b. One vehicle, regardless of value;
- c. Household and personal effects, regardless of value;
- d. Burial assets and funds set aside for the purpose of meeting burial expenses, regardless of value. This includes burial trusts, burial funds, burial plots, burial insurance and other property or funds expressly set aside for burial expenses; and
- e. Any other assets that would otherwise be excluded for purposes of SSI-related MA eligibility determination as provided under s.HSS 103.06.

3. 'Asset limit'. The agency shall compare the value of the couple's assets to the amount obtained by adding the SSI-related one person asset limit under s.49.47(4)(b)3g, Stats., to the community spouse resource allowance under s.49.455(6)(b), Stats. If the couple's available assets are equal to or less than the asset limit, the institutionalized spouse is asset eligible for MA.

(c) Consideration of community spouse's assets. During a continuous period of institutionalization after an institutionalized spouse is determined to be eligible for MA, no assets of the community spouse may be considered available to the institutionalized spouse.

(d) Protected resources. 1. For the 12 months after an institutionalized spouse has been initially determined eligible for MA, an amount equal to the amount of assets comprising the community spouse resource allowance for which an institutionalized spouse has title interest that does not exceed the limits described in s.49.455(6)(b), Stats., shall be exempt from consideration;

2. After 12 months, the exemption of the protected spousal asset share ceases to exist;

3. In subsequent redeterminations of eligibility after 12 months, the agency shall compare the assets of an institutionalized spouse to the SSI-related MA asset limit provided under s.49.47(4)(b)3g, Stats. If the institutionalized spouse's assets exceed those limits, he or she is ineligible for MA.

4. Limits on countable assets shall be determined as provided in par. (b)2 as long as there is a community spouse.

(e) Exceptions to resource ineligibility. The agency may not determine an institutionalized spouse ineligible if one or more of the following conditions exists:

1. The institutionalized spouse has assigned to the state any rights to support from the community spouse;

2. The institutionalized spouse lacks the ability to execute an assignment under subd. 1 due to a physical or mental impairment but the agency has the right to bring a support proceeding against the community spouse without an assignment; or

3. The agency determines and documents in the case record that denial of eligibility would work an undue hardship for the institutionalized spouse. In this subdivision, "undue hardship" means that a serious impairment to the institutionalized individual's immediate health status exists.

(6) INCOME. (a) Income attribution. 1. No income of a community spouse may be deemed available to an institutionalized spouse applying for MA, except if a court order is in effect.

2. The agency shall count voluntary contributions of a community spouse towards the cost of his or her institutionalized spouse's care as income in determining an institutionalized spouse's eligibility and the amount that an institutionalized spouse is required to contribute towards the cost of his or her care. An agency may not request or suggest that a community spouse make a voluntary contribution toward the institutionalized spouse's cost of care.

3. Unless an institutionalized spouse establishes by a preponderance of evidence through a fair hearing that ownership interest is other than as provided under s.49.455(3)(b), Stats., and this subdivision, non-trust income shall be considered the income of the person in whose name the payment is made or, if the income is paid in both spouses' names or is unspecified, half shall be considered as the income of each or, if the income is shared with others, amounts equal to each spouse's proportionate share shall be considered available.

4. The agency shall consider trust income as available based upon the specific terms of the trust. Income paid to a spouse from the trust belongs to that spouse alone. If trust income is paid to both spouses or if the percentage is unspecified, half of the income shall be considered to belong to each spouse.

5. The income eligibility standards against which an institutionalized spouse's income is tested shall be the same as those under s.HSS 103.04(4).

(b) Protecting income for the community spouse and dependent family members. 1. 'Community spouse income allowance'. An MA-eligible institutionalized spouse may allocate income to his or her community spouse to provide for the monthly maintenance of the community spouse. An institutionalized spouse may allocate enough of his or her income, after deducting a personal needs allowance as provided under s.49.45(7)(a), Stats., or 42 CFR 435.726(c) in the case of an institutionalized spouse participating in a home and community-based care waiver program under s.46.277, Stats., to bring the community spouse's monthly income up to the amount specified in s.49.455(4)(b), Stats., or an amount ordered by a court, whichever is greater. The community spouse's monthly gross income shall be determined by the agency as provided under s.49.47(4)(c), Stats., without regard to the SSI-related MA deductions.

2. 'Family member income allowance'. An MA-eligible institutionalized spouse may deduct from his or her income, sufficient funds to bring each dependent family member's monthly income up to the amount specified in s.49.455(4)(a)3, Stats., or an amount ordered by a court, whichever is greater. A dependent family member is:

a. Any minor natural or adopted child or step-child of either the institutionalized spouse or the community spouse who resides with the community spouse;

b. Any adult natural or adopted child or step-child of either the institutionalized spouse or the community spouse who is claimed as a dependent by either the institutionalized spouse or the community spouse for tax purposes under the internal revenue service code or who could be claimed as a dependent for tax purposes if a tax return were filed and who resides with the community spouse;

c. A sibling of either the institutionalized spouse or the community spouse who is claimed as a dependent by either the institutionalized spouse or the community spouse for tax purposes under the internal revenue service code or who could be claimed as a dependent for tax purposes if a tax return were filed and who resides with the community spouse; or

d. A parent of either the institutionalized spouse or the community spouse who is claimed as a dependent by either the institutionalized spouse or the community spouse for tax purposes under the internal revenue service code or who could be claimed as a dependent for tax purposes if a tax return were filed and who resides with the community spouse.

(c) Computing income available towards cost of care. An institutionalized recipient shall apply his or her available income toward the cost of his or her care. In this subsection, "available income" means any income remaining after the following deductions are made from the recipient's gross monthly income:

1. A personal needs allowance as provided under s.49.45(7)(a), Stats., or 42 CFR 435.726(c), as appropriate;

2. The community spouse monthly income allowance under par. (b)1 that is actually made available by the institutionalized spouse to the community spouse or to another individual for the benefit of the community spouse;

3. The total family member income allowance calculated under par. (b)2, whether or not actually made available by the institutionalized spouse to a family member; and

4. The amount incurred as expenses for remedial or medical care for the institutionalized spouse as follows:

a. For an individual participating in a community-based care waiver program, the amount incurred as expenses for remedial or medical care and the cost of the individual's health insurance premiums; and

b. For an individual residing in a medical institution, the cost of the institutionalized spouse's health insurance premiums.

(7) NOTICE. The agency shall notify both spouses when it determines that an institutionalized spouse is eligible for MA, or it shall notify the spouse who requested a determination of MA eligibility. The notice shall be in writing and shall include the following information:

(a) The amount of the community spouse monthly income allowance calculated under sub.(6)(b)1;

(b) The amount of any family allowance calculated under sub.(6)(b)2;

(c) The amount of the couple's total countable assets determined under sub. (4)(c);

(d) The amount of the community spouse resource allowance and the method used to calculate the allowance under sub.(4)(c)3;

(e) The amount of income that the institutionalized spouse is required to contribute toward the cost of his or her care; and

(f) Each spouse's right to a fair hearing under sub.(8) concerning ownership or availability of income or resources and

the determination of the community spouse monthly income or resource allowance.

(8) FAIR HEARING. (a) An institutionalized spouse or a community spouse may request a fair hearing in accordance with the procedures set out in s.HSS 104.01(5) in regard to any of the following:

1. The determination of the community spouse monthly income allowance under sub. (6)(b)1;

2. The determination of the amount of the monthly income otherwise available to the community spouse used in the calculation under sub. (6)(b)1;

3. The amount of the couple's total countable assets determined under sub. (4)(c);

4. The determination of the spousal share of resources under sub. (4)(c)3; and

5. The determination of the community spouse resource allowance under sub. (4)(c)3.

(b) If the institutionalized spouse has made an application for MA and a fair hearing is requested under par. (a), the agency shall hold the hearing within 30 days after the request.

(c) If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (6)(b), the hearing officer shall determine an amount adequate to provide for the community spouse's needs. In this paragraph, "exceptional circumstances resulting in financial duress" means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs. The agency shall use the amount determined by the hearing officer in place of the minimum monthly maintenance needs allowance determined under sub. (6)(b).

(d) If either spouse establishes at a fair hearing that the community spouse resource allowance determined by the agency under sub. (4)(c)3 does not generate enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under s.49.455(4)(c), Stats., the hearing officer shall establish an amount to be used under sub. (5)(b) that results in a community spouse resource allowance that generates sufficient income to raise the community spouse's monthly income to the minimum monthly maintenance needs allowance under s.49.455(4)(c), Stats.



(e) Neither the institutionalized spouse nor the community spouse shall have the right to a fair hearing under this section until after an MA application is filed and MA eligibility and the benefit level are determined.

SECTION 16. HSS 103.08(4) is amended to read:

HSS 103.08(4) PREGNANCY-RELATED MA CASES. For ~~maternity pregnancy-related cases pursuant to ss.49.46(1)(a)1m and 9 and 49.47(4)(a)2 and (am)1, Stats.,~~ eligibility shall begin on the date pregnancy is verified or the date of application, whichever is ~~later~~ earlier, ~~pursuant to ss.49.46(1)(a)1m and 49.47(4)(a)2, Stats. but~~ eligibility may only be backdated as provided under sub. (1).

SECTION 17. HSS 103.09(2)(a) is repealed.

SECTION 18. HSS 103.09(2)(b) is renumbered 103.09(2) and HSS 103.09(2), as renumbered, is amended to read:

HSS 103.09(2) FOUR-MONTH CONTINUATION OF ELIGIBILITY. When an MA group ~~has become~~ becomes ineligible for AFDC due solely to excess income, is receiving child support payments and all of the excess income consists of child support collections, and has received an AFDC payment in at least 3 of the 6 months immediately preceding the month in which ineligibility begins, eligibility for MA shall continue for 4 months from the date that AFDC eligibility was terminated. The 6 months preceding the month in which ineligibility begins includes the month in which the MA group became ineligible for AFDC if the MA group was eligible for and received AFDC for that month.

SECTION 19. HSS 103.09(3)(a) is amended to read:

HSS 103.09(3)(a) When an MA group ~~has become~~ becomes ineligible for AFDC due to loss of the earned income disregards under s.49.19(5)(a)4 and 4m, or (am), Stats., or to a change in the amount of earned income disregards under s.49.19(5)(a)4 and 4m, or (am), Stats., eligibility for MA shall continue for 12 months from the date that AFDC eligibility was terminated.

SECTION 20. HSS 103.09(3)(b) is repealed and recreated to read:

HSS 103.09(3)(b) When an MA group becomes ineligible for AFDC due to an increase in earned income or an increase in hours of employment or a combination of increased earned income and increased hours of employment, eligibility for MA shall continue for 12 months from the date that AFDC eligibility was terminated provided that at least one member of the MA group received AFDC for at least 3 of the 6 months immediately preceding the month in which AFDC was discontinued and at least

one member of the MA group is continuously employed during that period.

SECTION 21. HSS 103.09(3)(c) is created to read:

HSS 103.09(3)(c) When an MA group becomes ineligible for AFDC due to an increase in earned income, or to a combination of an increase in earned income and an increase in child support payments, and has received an AFDC payment in at least 3 of the 6 months immediately preceding the month in which ineligibility begins, eligibility for MA shall continue for 12 months from the date that AFDC eligibility was terminated. The 6 months preceding the month in which ineligibility begins includes the month in which the MA group became ineligible for AFDC if the MA group was eligible for and received AFDC for that month.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s.227.22(2), Stats.

Wisconsin Department of Health and  
Social Services

Dated: January 15, 1993

By:



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Gerald Whitburn  
Secretary

SEAL:

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Bureau