

DMA BOARD OF APPEALS

Memorandum

To: Hearing Officer, D.M.A.

Subj: Institutionalized spouse (IS):
(Nursing Home)
Community Spouse (CS):
Revised Community Spouse Resource Allowance

Introduction

The Appellant CS, , filed a long term care Medicaid application on behalf of her husband, the IS, , on or about , 2003, at the Tewksbury MassHealth Enrollment Center.

By notice dated , 2003, the DMA made a determination that the couple had spousal assets valued at \$ and attributed \$, to the Community Spouse (CS), and the balance, \$ to the nursing home spouse (IS). The application was denied because of the excess assets attributed to the IS.

This matter is on appeal from that , 2003, denial of Medicaid eligibility for the IS. His wife has requested that the 2003, assessment of assets, be reviewed at the hearing, that a revised community spouse resource allowance be made at the same time, and, further, that a determination be made that the community spouse is entitled to a community spouse monthly income allowance (CSMIA), all pursuant to the provisions of 130 CMR 520.017 and G.L. c. 118E § 21A.

Facts

The IS was admitted as a resident at the _____ Nursing Home in _____, MA, on _____, where he remains.

The CS occupies their home at _____, MA. She pays the following monthly shelter costs: real estate taxes (\$ _____); homeowners' insurance (\$ _____), and pays all utilities. As of the date of her husband's admission to the nursing home, she had, and continues to have, monthly shelter expenses of \$ _____ and pays all utilities, including her telephone, and is thus entitled to a utility allowance of \$ _____. The total of these figures, _____, is relevant in the determination of her Minimum Monthly Maintenance Needs Allowance (MMMNA). Her only income was a monthly Social Security check in the amount of \$ _____. As of the operative date (the _____, 2003, admission), the couple owned countable assets that totaled \$ _____ in value.

Community spouse's MMMNA

The first step in determining the eligibility for a revised CSRA is to determine the CS's Minimum Monthly Maintenance Needs Allowance (MMMNA). To do so, her shelter costs are computed to determine whether they exceed 30% of the basic allowance of \$1,515.00. In this case, the shelter costs total \$ _____ which exceeds the 30% figure of \$455.00 by \$ _____. Her MMMNA, then, is the basic allowance, \$1,515.00, plus the shelter differential of \$ _____, for a total of \$ _____. Her income is her monthly Social Security pension of \$ _____. In order to meet her MMMNA, she needs to retain sufficient resources to generate the difference: \$ _____. Her share of the spousal assets (\$ _____) generate income of \$ _____ per month (the highest rate quoted in the Bank Rate Monitor Index is _____%). Up until September 1, 2003, the CS would have been entitled to retain sufficient spousal assets beyond her basic asset allowance

in order to generate the shortfall.

With advent of the so-called “income first” rule, however, [130 C.M.R. 520.017(C)(2)], the hearing officer must first look to the IS’s income to determine whether he has monthly income which may be imputed to the CS in order for her to be able to meet her MMMNA. The IS’s monthly income consists of Social Security (\$) and \$. We contend that the hearing officer, in the process of determining the CS’s revised CSRA, is foreclosed by federal law from imputing the IS’s Social Security benefits to the CS. Federal statutory law, at 42 U.S.C. § 407 (attached as Exhibit A), prohibits the involuntary assignment or alienation of Social Security benefits, which shall not “be subject to execution, levy, attachment, garnishment or other legal process”. In the case of *Robbins v. DeBuono*, (text of opinion attached as Exhibit B), the U.S. 2nd Circuit Court of appeals held that “legal process” includes the Medicaid program’s proceedings to determine the CS’s assets allowance (and the IS’s eligibility of Medicaid coverage) and therefore would violate the anti-alienation provisions of 42 U.S.C. § 407, where the IS’s Social Security benefits were imputed to the CS.

The IS’s income consists of the following:

Social Security benefits: \$

Other (): \$

Only \$ of the IS’s income may be lawfully imputed to the CS, in the determination of her revised CSRA:

CS’s MMMNA

CS’s SS and pension income:

Income from her share of marital assets:

Permissible imputed income from IS:

CS's total income:

Since the CS's total income remains below the MMMNA by \$ _____, she should be allowed to retain additional marital assets to generate the difference at 2.2%. Her revised CSRA should be \$ _____ (or the total of marital assets).

In addition, where the income from all sources remains below the CS's MMMNA, she is entitled to a Community Spouse Monthly Income Allowance in the amount of \$ _____ so that her income will meet her MMMNA. 130 C.M.R. 510.017(C)(3).

CSRA policy: 130 CMR 520.017

Under current regulations, 130 CMR 520.017, the CS is entitled to retain all spousal assets owned as of the assessment date, and to a community spouse monthly income allowance of \$ _____ from her husband's income. The conclusion is based on the facts outlined above.

Conclusion

Accordingly, the CS should be allowed to retain all of the spousal assets in order to generate sufficient income to bring her monthly income up to the MMMNA. The shortfall after the income from all marital assets is imputed to her should result in a monthly spousal income allowance of \$ _____ in order to bring her income up to meet her MMMNA.

Respectfully submitted,
