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TO: **Income Maintenance Supervisors**
Income Maintenance Lead Workers
Income Maintenance Staff
W-2 Agencies
Workforce Development Boards
Job Center Leads and Managers
Training Staff
Child Care Coordinators

FROM: Amy Mendel-Clemens
Technical Assistance, Training & Education
Section
Bureau of Eligibility Management
Division of Health Care Financing

BEM/DWS OPERATIONS MEMO					
No:	07-66				
DATE:	12/11/2007				
FS	<input type="checkbox"/>	MA	<input checked="" type="checkbox"/>	SC	<input type="checkbox"/>
CTS	<input type="checkbox"/>	CC	<input type="checkbox"/>	W-2	<input type="checkbox"/>
FSET	<input type="checkbox"/>	EA	<input type="checkbox"/>	CF	<input type="checkbox"/>
JAL	<input type="checkbox"/>	JC	<input type="checkbox"/>	RAP	<input type="checkbox"/>
WIA	<input type="checkbox"/>	Other	EP	<input type="checkbox"/>	★
PRIORITY: HIGH					

SUBJECT: Spousal Support Orders for Medicaid Spousal Impoverishment Cases

CROSS REFERENCE: Medicaid Eligibility Handbook chapter 5.10.8

EFFECTIVE DATE: IMMEDIATELY

PURPOSE

To respond to a recent decision by the Court of Appeals which prohibits the pursuit of support orders from a community spouse under Wis. Stat. § 49.90 for Medicaid (MA) spousal impoverishment cases.

BACKGROUND

On July 19, 2007, the District III Court of Appeals reversed a previous order by the circuit court for Chippewa County which permitted the county to seek support orders under Wis. Stat. §49.90 requiring a community spouse to contribute to the support of the institutionalized spouse. The case is *Chippewa County Department of Human Services v. Samuel O. Bush*. The appellate court determined that § 49.90 is one of general applicability and makes no reference to spouses receiving MA. On the other hand, Wis. Stat. § 49.455 is specifically directed toward MA couples. It interpreted § 49.455 (3) as unambiguously declaring that the income of a community spouse is not available to the institutionalized spouse "during any month in which

that other spouse is an institutionalized spouse” and therefore is a bar to the county seeking support from the community spouse. This applies both in eligibility determinations and in determinations regarding contributions toward care of an institutionalized spouse.

POLICY

Effective immediately, for MA cases that meet the definition of spousal impoverishment do not pursue support orders or agreements for contributions from the community spouse to the institutionalized spouse. In addition, do not collect any further support from existing support orders or agreements. This does not apply to any order entered prior to the institutionalized spouse’s application for MA or for any contributions voluntarily made by the community spouse that are not at the request of the county agency. Chapter 5.10.8 of the Medicaid Eligibility Handbook is now obsolete, and will be deleted in a future Handbook release.

Also effective immediately, if a community spouse refuses to sign or otherwise cooperate in providing information necessary to process an application for an institutionalized spouse under spousal impoverishment provisions, determine the institutionalized spouse’s eligibility using non-spousal impoverishment rules. The current policy to use the best information available under these circumstances was based on the ability of the agency to seek support from the community spouse. Since the court decision no longer permits seeking such support there is no justification for the current policy.

CONTACTS

BEM CARES Information & Problem Resolution Center

★Program Categories – FS – FoodShare, MA – Medicaid, SC – Senior Care, CTS – Caretaker Supplement, CC – Child Care, W-2 – Wisconsin Works, FSET – Food Stamp Employment and Training, CF – Children First, EA – Emergency Assistance, JAL – Job Access Loan, JC - Job Center Programs, RAP – Refugee Assistance Program, WIA – Workforce Investment Act, Other EP – Other Employment Programs.

DHFS/DHCF/BEM/SM