

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

February 22, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3095-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

PERCY PETERSON,

Petitioner-Respondent,

v.

DEPARTMENT OF HEALTH & SOCIAL SERVICES,

Respondent-Appellant.

APPEAL from an order of the circuit court for Iowa County:
JAMES P. FIEDLER, Judge. *Affirmed.*

Before Gartzke, P.J., Dykman and Vergeront, JJ.

PER CURIAM. The Department of Health & Social Services appeals from an order reversing its decision regarding the date of Percy Peterson's medical assistance (MA) eligibility.¹ The department ruled as a matter of law that Peterson was not eligible before his application date of

¹ This is an expedited appeal under RULE 809.17, STATS.

August 30, 1994. The trial court held that Peterson could be determined eligible as early as May 1, 1994, and remanded for a determination of eligibility as of that date. We agree with the trial court's interpretation of the applicable law, and affirm.

Peterson was institutionalized at the Medical Care Facility of Iowa County in April 1994. Between then and August 30 he and his wife Thora paid several thousand dollars for his care, reducing their assets from \$112,000 to \$88,000. On August 30 Thora applied for MA on his behalf. MA was denied because the Petersons' remaining assets still exceeded the maximum allowable amount of \$72,660. See § 49.455(6)(b)1, STATS. It is stipulated that but for the excess assets, Percy would have qualified for MA as of May 1 under WIS. ADM. CODE § HSS 103.08(1). ("Eligibility shall begin on the date on which all eligibility requirements were met, but no earlier than the first day of the month 3 months prior to the month of application.")

On review of an MA denial, the department may grant MA eligibility despite excess assets, if all or part of those assets are needed by the institutionalized person's spouse to meet his or her minimum monthly maintenance needs. Sections 49.455(6) and (8), STATS. (The minimum monthly maintenance need for one person was \$1,816.50 in 1994. Section 49.455(4)(c).) At a hearing on the matter, the Petersons produced evidence that even with the income from their excess assets of \$112,000 as of May 1, Thora could not have reached the \$1,816.50 monthly standard. They also showed that her income potential was reduced even further after those assets were reduced to \$88,000 on August 30.

Based on the evidence of Thora's need, the department decided that Percy was eligible for MA as of August 30 despite the excess assets on that date. The Petersons commenced this action for § 227.52, STATS., review, however, because the department deemed August 30 the earliest date of eligibility under the law. They contended that the earliest eligibility date was, instead, May 1, 1994 under WIS. ADM. CODE § HSS 103.08(1). The trial court agreed and remanded the case to the department for a determination of financial eligibility as of that date. That order is the subject of this appeal.

The trial court properly determined that Percy may be deemed eligible for MA as early as May 1. The department issued its eligibility order in January 1995, retroactive to the date of application, August 30, and based it on the assets then existing. Having determined that its authority under §§ 49.455(6) and (8), STATS., allowed a retroactive determination based on then existing assets, it advances no persuasive reason why WIS. ADM. CODE § HSS 103.08(1) does not control the effective date of the retroactive eligibility. It is the exclusive rule on the date of an applicant's eligibility under the statutes governing MA and the rules implementing them.

The department argues that the purpose of MA "is not to subsidize the care of individuals who are in a position to pay the costs of such care out of their own income or resources at any given time." The Petersons offered proof that as of May 1 they were not in a position to pay the costs of Percy's care and meet Thora's minimum needs as established by § 49.455(4)(c), STATS. On remand, the department must therefore reconsider the Petersons' application for MA using May 1, 1994 and not August 30, 1994 as the earliest date of potential eligibility.

By the Court. – Order affirmed

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.