



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

MRA/171293

PRELIMINARY RECITALS

Pursuant to a petition filed January 07, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance, a hearing was held on February 02, 2016, at Waupaca, Wisconsin.

The issue for determination is whether the petitioner is entitled to an increase in the community spouse income allowance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted name and address]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [Redacted name]
Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Waupaca County.
2. The petitioner is a resident of the [Redacted] nursing home in Waupaca County. He is married with a community spouse.

3. On October 7, 2015 the agency sent the petitioner a notice stating that effective November 1, 2015 his monthly cost share amount was \$1,541.75.
4. The petitioner receives \$1,445.00 in social security. The community spouses' monthly gross income is \$3,401.36 from employment.
5. The couple has three rental properties. The community spouse lives in one unit of one of the rental properties. As of the date of the hearing the total rent received was \$3,225 in monthly rent. The total mortgage payments, which includes principal, interest, and property taxes is \$2908 for all of the properties. This leaves \$317 per month for maintenance and upkeep.
6. The community spouse has \$2049.39 in monthly expenses consisting of the following:
  - \$460 – Credit Card Payments
  - \$157.40 – Veteran's Home
  - \$52.94 – Phones
  - \$116.22 – Groceries
  - \$35.29 – Gas
  - \$50.00 – Clothing
  - \$10.85 – Health and Beauty
  - \$76.96 – Disabled Van Parts
  - \$60.00 – Oil Changes
  - \$644.82 – Earned Income Taxes
  - \$357.20 - health insurance
7. The community spouse does not have a rental or mortgage payment as that is covered by the monthly rent that she receives.
8. The community spouse listed expenses from some ambulance companies and [REDACTED] nursing home. As of the date of decision, these expenses will have been paid if the community spouse had complied with the monthly payment plan.
9. On January 11, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

### DISCUSSION

Wis. Stat., §49.455 is the Wisconsin codification of 42 U.S.C. s.13964-5 (MCCA). Among other things, the "spousal impoverishment" provisions at sec. 49.455 direct the Department to establish an income allowance for the community spouse of an institutionalized person. That allowance set by the county. See MA Handbook, Appendix 18.6.2. The institutionalized person may divert some of his income to his community spouse rather than contributing to his cost of care. The amount of the diverted income, when combined with the spouse's income, cannot exceed the maximum allocation determined by the county. The maximum allocation is \$2,980.50. Any income of the institutionalized spouse that is not allocated to the community spouse or the personal needs allowance must be paid to the nursing home as the person's cost of care share.

The petitioner and his community spouse do not dispute the agency's calculations of their monthly cost share amount. The community spouse argues that given her monthly expenses are more than her income allocation, and that she needs more money to live.

An administrative law judge (ALJ) can grant an exception to this limit on income diversion. The ALJ may increase the income allowance following a fair hearing. The ALJ does not have unfettered discretion in creating an exception to the maximum allocation ceiling, however. The relevant statutory provision states that the test for exception is as follows:

(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. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse monthly income allowance under sub. (4)(b).

Wis. Stat., §49.455(8)(c), emphasis added. Thus an ALJ may augment the maximum allocation ceiling only by amounts needed to alleviate financial duress, to allow the community spouse to meet necessary and basic maintenance needs. The standard for raising the income allowance is whether, due to exceptional circumstances that could result in financial duress, petitioner's wife needs additional income on top of the \$2,980.50 already allowed to her.

The community spouse works and earns more than the maximum income allowance. The community spouse provided a spreadsheet showing what she concluded to be her monthly income and monthly expenses. The community spouse states that her monthly expenses are as follows:

\$460 – Credit Card Payments
\$157.40 – Veteran's Home
\$52.94 – Phones
\$116.22 – Groceries
\$35.29 – Gas
\$50.00 – Clothing
\$10.85 – Health and Beauty
\$76.96 – Disabled Van Parts
\$60.00 – Oil Changes
<hr/>
\$1,048.37

In addition to these listed expenses, the community spouse's pay check shows that she pays the following additional expenses:

\$644.82 – Taxes
\$357.20 - Health insurance
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\$1,002.02

Thus, the community spouses' total monthly expenses are \$2,049.39 (\$1,048.37 + \$1,002.02). This is significantly less than the maximum income allocation of \$2,980.50

The community spouse does not have any rental expenses because she lives in one of her rental units. This mortgage payment and expenses are included in her rental business, which is discussed below. The community spouse listed some monthly expenses paid to ambulance companies and [REDACTED] Nursing home. Her testimony was that some of these bills were paid as of the date of the hearing. The bills that were not paid as of the date of the hearing had only a few hundred dollars remaining. These bills should be paid as the date of decision assuming the community spouse complied with her payment plans.

The petitioner and his spouse have three rental properties. The community spouse lives in one unit of one of the properties. The spreadsheet lists a total monthly rent received in the amount of \$2,525. At the hearing the community spouse testified that one unit, which had been vacant was recently rented for \$700 per month. This brings the total monthly rental income to \$3,225. The total of the mortgage payments for all three properties is \$2,908. This amount includes principal, interest, and taxes. The petitioner does not provide verification of the monthly expenses for the rental properties. She lists some expenses, but these expenses do not appear to be recurring monthly expenses. Regardless the total rent of \$3,225 minus \$2,908 for the mortgage and taxes leaves \$317 for maintenance and upkeep on these properties. The properties appear to be self-supporting.

I note that I do not find the petitioner and his community spouse's spreadsheet credible. The income and expenses for the rental properties do not appear to match the 2014 tax return. This is the most recent tax return. In addition she failed to include that one unit was recently rented for an additional \$700 per month. Another issue with the spreadsheet is that she is looking at her net income. A review of her paycheck shows that she has \$315.84 deducted each month for 401k contributions. She also has a small amount of money deducted each month from her check for life insurance. She fails to include any of this information on her spreadsheet. A final point is that the bottom number for her total monthly expenses is within \$50 of what she claims to be her net income plus the institutionalized spouse's social security payment. This appears to be a convenient calculation in an attempt to avoid a monthly cost share amount.

The community spouse has not provided expenses to justify a greater income allocation. All of her expenses do not total the maximum monthly income allocation that she is already allowed. She attempts to lump her business expenses with her personal expenses. The business appears to be largely self-sufficient. The burden is on the community spouse to show that she is under financial distress and requires more money each month. She has failed to show that.

### **CONCLUSIONS OF LAW**

The petitioner is not entitled to an increase in the community spouse income allowance.

**THEREFORE, it is** **ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 25th day of March, 2016

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 25, 2016.

Waupaca County Department of Social Services  
Division of Health Care Access and Accountability