



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
c/o Atty Charles Stansberry Jr
2835 S Moorland Road
New Berlin, WI 53151-3743

DECISION

MRA/141571

PRELIMINARY RECITALS

Pursuant to a petition filed June 12, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on August 21, 2012, at Waukesha, Wisconsin.

The issue for determination is whether Petitioner's community spouse's income allocation may be increased (thus reducing Petitioner's patient liability) .

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
c/o Atty Charles Stansberry Jr
2835 S Moorland Road
New Berlin, WI 53151-3743

Petitioner's Representative:

Attorney Charles Stansberry Jr
2835 S Moorland Rd
New Berlin, WI 53151-3743

Respondent:

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

By: rymymm

Waukesha County Health and Human Services
500 Riverview Avenue

Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. Petitioner has a community spouse. Petitioner seeks an increase in her community spouse income allocation.
3. Petitioner’s gross income was \$ 4329.40 at the time of this appeal. After a personal allowance of \$45.00, Petitioner’s countable income was \$4284.40.
4. Petitioner’s community spouse’s gross monthly income was \$ 567.91 from a family real estate partnership at the time of this appeal.
5. Total gross income for Petitioner and spouse was, after the \$45 personal allowance, \$----5392.94 at the time of this appeal.
6. The maximum community spouse income allocation (CSIA) available without a hearing at the time of Petitioner’s institutionalization was the lesser of \$2 841.00 or \$2521.67 plus shelter costs in excess of \$756.50; here the CSIA used was the \$2521.67.
7. The agency did allocate \$1953.67 of Petitioner’s income to his spouse to bring her income to \$2521.67. This set Petitioner’s patient liability amount at \$2364.05.
8. Petitioner and his community spouse requested this hearing seeking an increase in the CSIA. The community spouse claims the following monthly expenses:

Bills

Groceries	\$443.60
Car/gas expenses	\$279.07
Telephone	\$ 84.56
Kohl’s charge card*	\$ 29.00
Bill Me Later*	\$ 35.00
Steinhafels*	\$ 34.00
Chase Bank*	\$102.00
Bank of America*	\$525.00
Martin County water bill	\$ 26.90
Health insurance	\$476.00
Auto insurance	\$139.94
Dental insurance	\$165.12
Florida Power & Light	\$145.61
Petitioner student loan	\$ 95.48
Spouse student loan	\$397.74
Internet	\$ 41.51
Pool-service	\$ 85.00
Boston Store*	\$ 13.00
Property taxes	\$367.03
Homeowners insurance	\$294.88
Cell phone	\$ 84.44

Petitioner's representative indicates that this totals \$3864.95. The items within an ‘*’ are the minimum monthly payments on outstanding balances of approximately \$30,000 in total. Additionally, petitioner and his spouse have \$19,898.59 of other outstanding debts that are not included above as no payments are being made.

9. Petitioner and spouse seek to have enough of Petitioner’s income allocated to the community spouse to pay the \$3864.95. After the community spouse income the shortfall is \$3297.04

(\$3864.95 - \$567.91). Viewed alternatively, this is a request is to reduce Petitioner's patient liability amount to \$987.36 (\$4284.40 [Petitioner's income after \$45 personal allowance] - \$3297.04).

DISCUSSION

Medical assistance rules require institutionalized persons to “apply their available income toward the cost of their care.” *Wis. Admin. Code § DHS 103.07(1)(d)*. However, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of an institutionalized person so that she does not fall into poverty. *See Wis. Stat. § 49.455 and 42 U.S.C. § 13964-5*; also see *Medicaid Eligibility Manual (MEH), §18.1*. An institutionalized person may allocate some of his/her income to the community spouse. *MEH, §18.6.1*. The minimum monthly maintenance needs allowance (MMMNA) currently is the lesser of \$2,841 or \$2,521.67 plus excess shelter costs. *Medical Eligibility Handbook (MEH), § 18.6.2*. Excess shelter costs are shelter costs above \$756.50. *Id.*

Administrative law judges (ALJs) have the authority to increase the CSIA above the MMMNA where the MMMNA is insufficient to meet a particular community spouse's *basic* maintenance needs. *Wis. Stat. §49.455(8)(c); Wis. Admin. Code §DHS 103.075(8)(c); Medicaid Eligibility Handbook 18.6*. However, an increase in the CSIA above the MMMNA can be made through the fair hearing process only if it is established that the community spouse requires income above the level provided by the MMMNA due to the existence of "exceptional circumstances resulting in financial duress" for the community spouse. *Wis. Stat. §49.455(8) (c)*. Further, “ ... 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”. *Wis. Admin. Code §DHS 103.075(8)(c)*.

Thus the standard to be applied by the Division of Hearings and Appeals in making a determination as to whether the CSIA may be increased is whether leaving the CSIA at the standard limit will result in financial distress for the community spouse such that the community spouse is unable to meet necessary and basic maintenance needs. Based on this criteria I have reviewed the expenses noted at Finding # 9 and have concerns and adjustments to make:

- Petitioner's community spouse notes \$84.44 and \$84.56 monthly expenses for phone and cell phone. These are not expenses that can be supported under the necessary and basic maintenance needs. I note that the FoodShare (f/k/a Food Stamp) program allows \$29.00 as a standard telephone deduction. *FoodShare Eligibility Handbook (FSH), Appendix 8.1.3*. I am, therefore, going to limit the deduction to that \$29.00 amount, a reduction of \$140.00 ($\$84.56 + \$84.44 = \169.29).
- Petitioner's community spouse notes a food expense of \$ 443.64 per month. For one person this is very high and I note that the maximum FoodShare allotment for one person with zero income is \$200.00 per month. *FSH, §8.1.2*. Thus I am reducing the food expense to that amount; a reduction of \$243.64.
- Internet service is not a basic and necessary need. Thus, the \$41.51 internet expense is eliminated.
- I questioned the need for \$85 per month pool service. Post hearing, petitioner's representatives were able to submit information from the pool service of Florida that indicated that the pool cannot be drained because of the water table in Florida. The pressure of the shallow water table would collapse the walls of the pool. While I understand that the property needs to be maintained, I cannot, in the long run view a pool as basic and necessary maintenance. Thus I am approving the \$85 service but limiting

that approval to six months so that time could be made to make other arrangements for care of the pool.

- Similarly, homeowners insurance was noted to be almost \$300 per month. This is significantly higher than the \$50-100 per month typically paid by a Wisconsin homeowner. I question the Wisconsin Medicaid program, in essence, is paying for the cost of maintaining out of state property long-term. I will, therefore, approve expense for one year and asked that the agency flag this case for review in 12 months.

Thus I am reducing the amount of the requested increase by \$424.15 for six months and by \$510.15 after that until review. This makes allowable expenses, after the community spouse income of \$591.67 and these reductions, \$2872.89 for six months (\$3297.04 - 424.15) and then \$2786.89 (\$3297.04 - 510.15) until review. As the maximum allowed CSIA is \$2521.67, this means I am increasing the CSIA by an additional \$351.22 per month (\$2872.89 - 2521.67) for six months. After that the CSIA will drop by the additional \$85.00 to \$2786.89; i.e. an increase of \$265.22.

CONCLUSIONS OF LAW

That Petitioner has demonstrated that an increase in his community spouse income allowance in the amount of \$351.22 is warranted for six months thereafter an increase of \$265.22 is warranted.

NOW, THEREFORE, it is

ORDERED

That the matter be remanded to the county agency with instructions to add \$351.22 per month to the community spouse income allowance for six months following this decision, thereafter \$265.22 per month until reviewed. The county agency must take these steps within 10 days of the date of this Order. Further, the agency should set this for a review in 12 months.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of September, 2012

David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals

c: Waukesha County Health and Human Services - email
Department of Health Services - email
Charles Stansberry Jr, Schober Schober & Mitchell SC - e-mail



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The preceding decision was sent to the following parties on September 20, 2012.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability
cjs@schoberlaw.com