



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
c/o [Redacted]

DECISION

MRA/141777

PRELIMINARY RECITALS

Pursuant to a petition filed June 19, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Department of Human Services in regard to Medical Assistance, a hearing was held on September 17, 2012, at Kenosha, Wisconsin.

The record was held open to give the Kenosha County Department of Human Services (the agency) an opportunity to submit copies of the Institution Medicaid Budget Printouts, proof of pension income and proof of Social Security income. The budget printouts have been marked as Exhibit 5; the pension statements have been marked as Exhibit 6; and the data exchange printouts concerning social security benefits have been marked as Exhibit 7.

The record was also held open until September 24, 2012, to give Petitioner an opportunity to submit bills and other documentation to substantiate her claimed expenses and to submit her Social Security Income statements. Counsel submitted a 90-page packet that has been marked as Exhibit 8.

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 [Redacted]

Petitioner's Representative:

Attorneys Carl R. Edenhofer, Jr. and
Bryce Lehman
7137-236th Avenue
Salem, WI 53168

Respondent:

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

By: Jesse Noyola
Kenosha County Department of Human Services
8600 Sheridan Road, Suite 122
Kenosha, WI 53143-6508

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner has a community spouse.
3. On April 30, 2012, Petitioner applied for Long Term Care Assistance. On May 11, 2012, the agency sent Petitioner a notice indicating that his application was approved and that his patient liability for April 2012 would be \$4,720.91 and that his patient liability for May 2012 onward would be \$4,363.82. (Exhibit 2)
4. The maximum community spouse income allocation (CSIA) available without a hearing at the time of Petitioner's application was the *lesser* of \$2841.00 or \$2521.67 plus shelter costs in excess of \$756.50; so here the CSIA used was the \$2841.00. (Exhibit 5)
5. Petitioner's countable gross income for March 2012 was \$ 6759.73:

$$\$2220.90 \text{ Social Security} + 4638.73 \text{ Annuity} - \$99.90 \text{ Medicare Part-B premium}$$
 His gross countable income for April 2012 was \$6435.02:

$$\$2220.90 \text{ Social Security} + \$4314.02 \text{ Annuity} - \$99.90 \text{ Medicare Part B premium}$$

(See Exhibits 6, 7 and 8)
6. Petitioner's community spouse's countable gross monthly income for March 2012 was \$1139.54.

$$\$776.90 \text{ Social Security} + \$462.54 \text{ Annuity} - \$99.90 \text{ Medicare Part B premium}$$
 Her countable gross income for April 2012 was \$1107.16

$$\$776.90 \text{ Social Security} + \$430.16 \text{ Annuity} - \$99.90 \text{ Medicare Part B premium.}$$

(See Exhibits 6, 7, and 8)
7. Petitioner has a recurring monthly expense of \$292.60 for health insurance. (See Exhibit 5)
8. The agency did allocate \$1,701.46 of Petitioner's income to his spouse to bring her income to \$2841.00 in April 2012:

$$\$2841.00 \text{ Maximum allowable allocation} - \$1139.54 \text{ Spouse's income}$$
 The agency also allocated \$1733.84 of Petitioner's income to his spouse to bring her income to \$2841.00 for May 2012 onward.

$$\$2841.00 \text{ Maximum allowable allocation} - \$1107.16 \text{ Spouse's income}$$
9. On June 19, 2012, Petitioner's spouse filed an appeal on his behalf. (Exhibit 1) Petitioner and his community spouse requested this hearing seeking an increase in the CSIA. The community spouse claims the following monthly expenses, all based on an 18 month average (Exhibit 8):

1. Mortgage	\$608.00
2. Property Tax	\$282.21
3. Homeowner's Insurance	\$36.66
4. Household repairs	\$136.95
5. Utilities	\$266.66
6. Yard maintenance/Snow removal	\$100.00
7. Replacement of "necessaries"	\$50.00
8. Lodging	\$133.93
9. Cell Phone	\$156.00
10. Spouse's Health Insurance	\$231.70

11. Medicare Prescription Drug Plan	\$114.70
12. Cable television/Internet	\$142.71
13. Food/Groceries	\$396.79
14. Household supplies	\$96.22
15. Auto Insurance	\$70.00
16. Auto Repairs	\$78.33
17. Vehicle Licensing	\$6.25
18. Gasoline/Oil	\$121.00
19. Clothes/shoes	\$60.00
20. Entertainment	\$35.00
21. Dentist	\$35.00
22. Optometrist	\$16.88
23. Medications	\$50.00
24. Hair Care	\$24.00
25. Newspaper	\$21.00
26. Tithing	\$120.00
27. Gifts	\$100.00

TOTAL \$3,489.82

Thus Petitioner seeks to allocate enough of his income to bring the community spouse income to \$3,489.82.

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*. Thus, an institutionalized person may allocate some of his/her income to the community spouse. The minimum monthly maintenance needs allowance (MMMNA) currently is the lesser of \$2,739 or \$2,451.67 plus excess shelter costs. *MEH § 18.6.1 and 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”. *Emphasis added. 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. *Emphasis added.*

The expenses noted at Finding # 9 were reviewed at the hearing and I have reviewed them again in writing this Decision. There are some concerns and adjustments to be made:

- Petitioner's spouse lists "Replacement of Necessaries" at \$50.00 a month and "Household Supplies" at \$96.22 per month. However, Petitioner's wife was unable to explain what these items entailed, nor was she able to differentiate between the two. Petitioner's attorney provided an unsatisfactory and unclear explanation of the expenses. At best, it sounded like what would be necessary for a monthly run to a store like Target or Wal-Mart to purchase various items like toilet paper, house cleaning supplies, shampoo, toothpaste, etc. Having said that, a total monthly expense of \$146.22 for such items is excessive for one person. A more reasonable estimation would be \$90.00 a month. As such, the expenses will be reduced accordingly.
- Petitioner's spouse lists an expense of \$133.93 for lodging. It is unclear from the record what this expense entails, but hotel stays to visit friends or family or for vacation are not a basic necessity. As such, this expense will not be allowed.
- Petitioner's spouse lists a monthly expense of \$156.00 for cell phone service. This expense cannot be supported under the basic and necessary maintenance needs standard, particularly since Petitioner has landline phone service. As such, this expense will not be allowed. If Petitioner desires a cellphone, there are service providers that offer 200 minutes of free service per month to certain individuals on public assistance.

I note that the FoodShare (f/k/a Food Stamp) program only allows \$28.00 per month as a deduction from income for phone service. *FoodShare Eligibility Handbook, Appendix 8.1.3*. In the absence of an actual phone bill documenting the cost of basic service, I am, therefore, going to limit the deduction for one type of phone service, be that cellular or landline to that \$28.00 amount.

- The Petitioner's spouse asserts an expense of \$142.71 for cable television and internet service through Time Warner Cable. Neither cable television, nor internet service is a basic and necessary expense. Petitioner's attorney argued that reception in Kenosha is poor and requires cable television. However, a less expensive option of an external antenna exists. Indeed, this writer does not have cable television and must use an external antenna for reception. Further, the Petitioner's spouse does drive and local libraries provide access the internet. Consequently, this expense will not be allowed.
- Petitioner's spouse asserts a monthly grocery bill of \$396.79 for one person. This is also excessive. Indeed, the FoodShare Program's maximum allotment for a single individual with no income is \$200. *FoodShare Eligibility Handbook, Appendix 8.1.2*. Consequently, the monthly grocery expense shall be reduced accordingly.
- Petitioner's spouse asserts \$78.33 a month is necessary for auto repairs to her 2008 Toyota Highlander. However, Petitioner's spouse testified that the vehicle only has about 49,000 miles on it and to date, she has not needed to repair the vehicle. Consequently, this expense will not be allowed. It should be noted that \$120.00 per month for gasoline and oil changes are being allowed.

- Petitioner's spouse also lists \$60.00 a month for clothing and shoes. This works out to \$720 a year to replace clothing and shoes that have worn out. There is nothing in the record that justifies such an expense. That is more than what is necessary to meet a person's basic and necessary need for clothing. Half that amount is a generous allowance, especially since the \$24.00 monthly cost of hair care is being allowed as a personal expense, in addition to \$90.00 per month for "replacement of necessities" and household supplies. As such, the expense for clothing and shoes will be reduced to \$30.00 a month.
- Petitioner's spouse lists \$35.00 a month for entertainment. Entertainment is not a basic and necessary expense. As such the expense will not be allowed.
- Petitioner's spouse lists \$21.00 a month for newspapers as an expense. Newspapers are not a basic necessity. Again, Petitioner's spouse is able to drive and I note that newspapers and periodicals are often available at local libraries. Accordingly, the expense will not be allowed.
- Petitioner's spouse lists \$120 a month for tithing to their church. While Petitioner's desire to support his church is understandable, tithing is not a basic and necessary expense. Accordingly, the expense will not be allowed.
- Petitioner's spouse asserts a need of \$100.00 a month for gifts for her children, their spouses and grandchildren. Gifts to others are not a basic and necessary expense. As such it is not an allowable expense.

After making the aforementioned adjustments, Petitioner's spouse's monthly expenses total \$2447.84. This is less than the maximum allowed CSIA of \$2841.00. As such, there is no basis upon which to adjust the income allocated to the community spouse. Further, having reviewed the agency's calculation of Petitioner's cost share /patient liability, I can find no error.

CONCLUSIONS OF LAW

That Petitioner has not demonstrated that an increase in his community spouse income allowance is warranted.

NOW, THEREFORE, it is

ORDERED

That the petition is dismissed.

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).

Appeals to Circuit Court should name the Department of Health Services as the respondent. After filing the appeal with the appropriate court, it must be served on the Office of 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 24th day of September, 2012.

Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

c: Kenosha Department of Human Services – email
Attorney Carl R. Edenhofer
Department of Health Services - email



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The preceding decision was sent to the following parties on September 24, 2012.

Kenosha County Human Service Department
Division of Health Care Access and Accountability
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