



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

MRA/142596

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 25, 2012, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a hearing was held on September 20, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner's community spouse income allocation can be increased.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Petitioner's Representative:

Attorney Anne McIntyre  
2675 N Mayfair Rd Suite 420  
Wauwatosa, WI 53226

Respondent:

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

By: NO APPEARANCE

Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's gross monthly income includes \$1793.90 in Social Security benefits and \$2218.81 from a pension. Petitioner's community spouse receives in \$886.90 in monthly Social Security benefits and \$1.70 in interest from a loan. From March 1, 2012 through August 31, 2012

petitioner's community spouse also received \$923.65 in rental income; that income ended in September 2012.

3. Petitioner entered a nursing home on February 28, 2012.
4. On May 10, 2012 petitioner applied for MA requesting a backdate of coverage to March 1, 2012.
5. On July 13, 2012 the agency issued a notice to petitioner stating that effective April 1, 2012 he would have a monthly cost of care of \$3126.79 through June 30, 2012. It also stated that his cost of care would be \$3056.79 effective July 1, 2012. The agency did provide evidence post-hearing that he was in fact eligible effective March 1, 2012 by a notice of decision dated October 17, 2012.
6. Petitioner's community spouse has a monthly shelter expense of (\$3662 (rent) + \$26.74 (rental insurance) = \$3688.74.
7. Petitioner's community spouse's allowable monthly expenses total \$5140.48 per month.

### DISCUSSION

Spousal impoverishment is an MA policy, created pursuant to the Medicare Catastrophic Coverage Act of 1988, which allows persons to retain assets and income that are above the regular MA financial limits. Spousal impoverishment policy applies only to institutionalized persons and their community spouses.

After an institutionalized person is found eligible, he may allocate some of his income to the community spouse if the community spouse's gross monthly income does not exceed the Maximum Community Spouse Income Allocation. The maximum allocation is the lesser of \$2,841.00 or \$2521.67 plus excess shelter allowance. See *MA Eligibility Handbook (MEH)*, §§18.1 & 18.6. "Excess shelter allowance" means shelter expenses above \$756.50. Thus, as her shelter expense is (rent plus renter's insurance) \$3688.74, the agency then subtracts \$756.50 from the community spouse's shelter costs (3688.74-756.50=2932.24), and the remainder is added to \$2521.67 (2932.24+2521.67=5453.91). Therefore the maximum allocation is the lesser allocation amount of \$2841.

In this case, the income of the community spouse is from March 1, 2012-August 31 is \$1812.25. From September 1, 2012 and onward, that amount is \$888.60. The community spouse argues that she cannot get by on the \$2841 Maximum Allocation. It is clear from the expenses she faces with her monthly bills. The county agency does not have discretion to allocate income to her that would cause her "income plus allocation" total to exceed \$2841. However, I have some limited discretion and have determined that her income is short of what she needs to cover basic living expenses. The statute allows the allocation to be raised to avert financial duress, created by exceptional circumstances, for the community spouse. I conclude that the Maximum Allocation must be raised to \$5089.48 to avert financial duress. The acceptable monthly expenses identified by the community spouse are as follows:

Rent (includes utilities)	3662
Renters Insurance	26.74
Rental/personal Maintenance	104.25
Medicare Part B Premium	99.90
Medicare Part D Premium	16
Home Equity Loan Payment	98.79
Auto Insurance	81.22
Dental Care	25
Health Insurance	200
Long Term Care Insurance	324.21
Telephone	61.37
Food	365

Television	42
Personal care	25
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TOTAL	\$5140.48

In setting the Maximum Allocation at \$5140.48, I accepted as accurate the budget numbers provided by the community spouse in her exhibits, and as further explained post-hearing.

A few expenses cannot be considered a basic living expense, and therefore were not included in the list of allowable expenses above. To determine whether an expense is basic, an ALJ looks at whether an expense is either mandatory (*e.g.*, income tax) or essential for survival (*e.g.*, food). Thus, only one long term care insurance was allowed, and one of the TV/cable expenses was allowed, as the ALJs in this office have routinely not treated these costs as a basic living expense. The agency is reminded to review these costs in an annual review to determine which if any debts (*e.g.*, loan payment) have been paid off or reduced.

I will order that the community spouse income allowance be raised to \$5140.48 per month. The county shall then change petitioner's monthly patient liability based upon the new allowance, noting that the income of the community spouse from March 1, 2012-August 31 is \$1812.25 and from September 1, 2012 and onward, that amount is \$888.60.

### **CONCLUSIONS OF LAW**

Petitioner's community spouse needs \$5140.48 in monthly income each month retroactive to March 1, 2012, to avoid financial duress.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be remanded to the county agency with instructions to increase Mrs. Orenstein's Maximum Community Spouse Income Allocation to \$5140.48 effective with the March 1, 2012 cost of care liability determination, to change the monthly patient liability accordingly, noting that the income of the community spouse from March 1, 2012-August 31 is \$1812.25 and from September 1, 2012 and onward, that amount is \$888.60, and to issue a notice of decision regarding same. This action shall be taken within 10 days of the date of this Decision. In all other respects, 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).

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 26th day of October, 2012

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Kelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals

c: Milwaukee Enrollment Services - email  
Department of Health Services - email  
Anne McIntyre, Nelson Iravings & Waeffler - e-mail



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

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The preceding decision was sent to the following parties on October 26, 2012.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability  
[amcintyre@niwlaw.com](mailto:amcintyre@niwlaw.com)