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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

MRA/144089

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 25, 2012, under Wis. Stat. § 49.455(8), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a hearing was held on November 7, 2012, by telephone. The record was held open nine days for submission of additional information; the additional information was received on November 16, 2012.

The issue for determination is whether petitioner's wife is entitled to an increase in her community spouse income allocation.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Chris Sobczak  
Milwaukee Enrollment Services  
1220 W. Vliet St.  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a nursing home resident of Milwaukee County.
2. Petitioner has been in the nursing home since May 29, 2012. An application for MA was filed on petitioner's behalf on August 13, 2012. Petitioner was found to be eligible for nursing home MA effective May 29, 2012.

3. Petitioner's monthly income is \$1,832.75 per month from social security and a pension.
4. Petitioner's wife has income of \$1,616.45 per month from social security and two pensions. Her community spouse income allowance was set at \$2,841, so \$1,224.55 of petitioner's income was allocated to her. The result was a monthly cost of care of \$563.20 as of June 1, 2012.
5. The agency informed petitioner of the determination in a notice dated August 22, 2012.
6. Petitioner's wife's necessary monthly expenses total less than \$2,841 per month.

### 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, based upon petitioner's housing costs, is \$2,841. 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. 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.

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 \$2,841 already allowed to her. Thus my job is not just to look at her expenses, but expenses that might cause financial duress due to exceptional circumstances.

I have reviewed the list of expenses submitted by petitioner's wife. The expenses she provided totaled \$2,380.65 plus some irregular expenses (prescriptions, dental, defibrillator check) that average out to about \$40 per month, for a total of \$2,420.65. She left out routine car maintenance and perhaps home maintenance that might total \$100 per month. Even then, she is more than \$300 below the \$2,841 income allowance. Although not listed on the expense list, she also provided copies of a number of medical bills outstanding from before petitioner's MA eligibility began. The largest is \$1,023 owed to Aurora, but most are under \$100. None of them include a regular monthly payment, but if she paid partial payments on those bills, she could do so with the \$300 per month available after the monthly expenses. Furthermore, the

monthly expenses include \$261.40 per month in short term personal loans that will be repaid in full by March, 2013.

It is possible that petitioner's wife's expenses really are higher than she shows, but I can only make my determination based upon the information provided. The information provided show her monthly expenses to be less than \$2,841, and thus even with the monthly cost of care she should have income to cover her expenses. She asks what she would do if an unexpected emergency expense arose; if that happens, and it results in a high monthly expense, she can always request an increase in the community spouse allowance again. At this point, however, there is insufficient basis to increase the allowance.

### **CONCLUSIONS OF LAW**

Petitioner's wife's monthly expenses are not higher than the community spouse income allowance determined by the county agency.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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 served and 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, 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 Madison,  
Wisconsin, this 21st day of November, 2012

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\sBrian C. Schneider  
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 November 21, 2012.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability