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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
c/o Atty Charles Stansberry  
[REDACTED]  
[REDACTED]

DECISION

MGE/145639

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 30, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sauk County Department of Human Services in regard to Medical Assistance, a hearing was held on January 04, 2013, at Baraboo, Wisconsin.

The issue for determination is whether the respondent correctly determined that petitioner's assets and income exceeded program limits for Institutional Medical Assistance (IMA).

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
c/o Atty Charles Stansberry  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Attorney Charles Stansberry Jr  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Jody Simon

Sauk County Department of Human Services  
505 Broadway, 4th Floor  
PO Box 29  
Baraboo, WI 53913

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Sauk County.
2. Petitioner applied for IMA on August 20, 2012, seeking retroactive approval as of July, 2012.

3. Respondent determined that petitioner was over the income limit for July, 2012, and the following months, and was over the asset limit for July, 2012.
4. Petitioner's pension income averages \$5,718.50 monthly; social security income is \$135.00 monthly, and Veterans Administration gross benefits (as of July, 2012) were \$2,019.00 monthly.
5. Petitioner's current Department of Veterans Affairs (VA) gross benefits total \$2,045.00, and his net VA benefits total \$1,038.00; his gross benefits are reduced due to other household income. Included in said benefits are Aid and Attendance benefits in the amount of 694.00 per month and a dependent allotment of \$321.00 per month.
6. Petitioner's monthly health insurance premium in 2011 was \$859.72.

### DISCUSSION

MA certification is available if all conditions of eligibility, including meeting the asset and income tests are satisfied. Wis. Admin. Code § DHS 103.08(1). Certification pursuant to an application can be made retroactive for up to three months.

In correspondence received post-hearing, respondent conceded that petitioner did, in fact, satisfy the asset limit requirement:

During the recent 1/4/2013 hearing on the appeal of this decision, I found I had made an error for the assets in July. There were 2 amounts provided for [REDACTED] account # [REDACTED] in July. On 7/16/12, the balance was \$14,344.80 but by 7/26/12, the balance was reported as \$5,143.23. This account is a joint one for Mr. and Mrs. [REDACTED] along with [REDACTED]. I only entered info for Mr. & Mrs. [REDACTED] on the case. The value of an asset at the end of the month can be used for the full month value. I had updated that account for Mr. [REDACTED] in the case but failed to do so on Mrs. [REDACTED]'s page. The difference between the 2 amounts for that account is \$9,201.57 which when subtracted from the original resulting total asset limit of \$60,584.57 comes to \$51,383.00. That amount is below the \$52,534.38 asset limit. He would not have been over the asset limit for July, 2012 for Inst. MA.

Exhibit 2, p.2.

Based upon the foregoing, I find that petitioner satisfied the asset requirement for July, 2012.

As to the issue concerning petitioner's income eligibility, the parties' respective calculations differ in several important respects.

First, petitioner argues that his net Veterans Administration benefits should be utilized, whereas the respondent argues that it is more appropriate to utilize his gross benefit allotment. The Medicaid Eligibility Handbook states as follows:

Unearned income is income that the member receives from sources other than employment. Unless it is disregarded income (15.3 Disregarded Income) or an income deduction (15.7 Income Deductions), count gross unearned income in the person's income total.

Medicaid Eligibility Handbook (MEH) § 15.4. Petitioner’s representative indicated that the gross amount is presently reduced by \$1,016.00 “based on the other household income.” Exhibit 3, p.3. This was apparently explained to him orally, but no further evidence in the record substantiates this claim. Since I am unable to confirm the basis for the \$1,016.00 reduction, and after review of the MEH disregarded income section and income deductions sections, I conclude that the respondent has demonstrated that she has properly commenced her calculations utilizing the gross amount.

Second, petitioner seeks to deduct the entirety of his medical insurance premium, in the amount of \$902.40.<sup>1</sup> The respondent counters that, since the insurance premium covers both spouses, that deduction should be divided in half; only 50% of the premium would, therefore, be subtracted. In support of this proposition, the respondent cites a MEH provision pertaining to assigning one half of unspecified income to each spouse. MEH § 18.5.1 (emphasis added). As applies specifically to the deduction for medical insurance premiums, however, the MEH states:

Medical expenses are anticipated incurred expenses for services or goods that have been prescribed or provided by a professional medical practitioner (licensed in Wisconsin or another state). The expense is for diagnosis, cure, treatment, or prevention of disease or for treatment affecting any part of the body. These are expenses that are the responsibility of the member, and cannot be reimbursable by any other source, such as Medicaid, private insurance, or employer.

The following are examples of medical expenses:

1. Deductibles and co-payments for Medicaid, Medicare, and private health insurances.
2. Health insurance premiums.
3. Bills for medical services which are not covered by the Wisconsin Medicaid program.
4. For purposes of meeting a Medicaid deductible, medical services received before the person became eligible for Medicaid. (Past medical bills cannot be used for MAPP premium calculations.)

MEH § 15.7.3. Nothing in this section requires the division of a medical insurance premium between two spouses. Respondent, however, also presented a Medical Summary printout indicating that, as of July, 2012, medical insurance premiums for petitioner and his spouse were \$429.85 each. Exhibit 2, p. 17. I further note that the MEH language at § 15.7.3 refers to medical expenses being “expenses that are the responsibility of the member.” Based upon the record before me, I find that the respondent has demonstrated that petitioner’s responsibility with regard to the medical insurance premium was actually \$429.85 in July, 2012, and therefore conclude that the respondent should deduct that amount from petitioner’s income.

Finally, petitioner has asserted that an Aid and Attendance amount should be properly deducted from his income. The respondent has not applied such a deduction, since it had no specific information regarding the portion of the Veterans Administration benefit applied to Aid and Attendance. Respondent conceded that it was aware of the existence of an Aid and Attendance amount, but could not verify the exact dollar figure. Post-hearing the petitioner submitted correspondence from the Veterans Administration indicating that the Aid and Attendance portion is \$694.00 per month. Pursuant to MEH § 15.3.26, this amount qualifies as a deduction.

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<sup>1</sup> Respondent utilized a medical insurance monthly premium figure of \$859.72, which was based upon petitioner’s 2011 1099-R.

Therefore, based upon the information in the record, I calculate petitioner's July, 2012, income as follows:

Wisconsin Retirement Pension	\$5,718.50
Social Security	\$ 135.00
VA benefit	<u>\$2,019.00<sup>2</sup></u>
<b>Total Monthly Income</b>	<b>\$7,872.50</b>

Applying deductions yields the following:

Total Monthly Income	\$7,872.50
Aid & Attendance	\$ (694.00)
Personal Needs Allowance	\$ (45.00)
Health Insurance Premium	\$ ( <u>429.85</u> )
<b>Total Countable Monthly Income</b>	<b>\$6,703.65</b>

Petitioner is a resident of [REDACTED]. The daily rate at Maplewood is \$232.00/day, which the respondent calculated to establish a monthly institutional care cost of \$7,056.66. Exhibit 2, p. 3. Therefore, petitioner's monthly institutional care cost exceeds his monthly income, after allowable deductions.

I note that the difference between my calculations and those of the respondent is derived largely from the application of the Aid and Attendance deduction, which information was not previously available to the respondent. Respondent concluded, in her correspondence of January 11, 2013:

... I then contacted ... [REDACTED] ... to find out if I had the correct daily rate ... I updated the case and reran eligibility. The daily rate is used when determining eligibility and the person's income is over the Categorically Needy Income Limit of \$2,094.00. The system will then look at a medically needy test. In the case of Mr. [REDACTED] the test included a personal allowance (\$45), health insurance cost (\$429.85), and the monthly institutional care cost (\$7,056.66 [232 daily rate x 365 days/12]). The total is \$7,531.51 ...

Exhibit 2, p. 3. Applying the allowable Aid and Attendance deduction to respondent's calculations, above, would result in an increase in the \$7,531.51 total to \$8,225.51. This clearly exceeds both petitioner's gross **and** countable monthly income figures.

As a final note, the respondent has indicated in her post-hearing correspondence that she has requested verification of Veterans Benefits from the VA office in Milwaukee, as she indicated that she would at the January 4, 2013 hearing. I find the information presented by the petitioner, i.e., the January 15, 2013, correspondence from the Department of Veterans Affairs (see, Exhibit 3, p. 8), sufficient verification of the Aid and Attendance amount.

Accordingly, this matter shall be remanded to the respondent to rescind its denial of petitioner's application for IMA, and find petitioner eligible for IMA benefits commencing in July, 2012. Based upon

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<sup>2</sup> Respondent utilized a figure of \$2,019, which was the VA benefit amount as of December 2011; petitioner notes that his benefit confirmation letter of January, 2013, indicates a monthly benefit of \$2,045.00.

my finding of petitioner's eligibility, income can be allocated to petitioner's spouse in accordance with Chapter 18 of the MEH.

### **CONCLUSIONS OF LAW**

1. Petitioner satisfies both asset and income tests for purposes of Institutional Medical Assistance.
2. Because petitioner is eligible for Institutional Medical Assistance, income shall be allocated to petitioner's spouse in accordance with Chapter 18 of the Medicaid Eligibility Handbook.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the respondent to rescind its denial of petitioner's application for Institutional Medical Assistance, and find petitioner eligible for Institutional Medical Assistance benefits commencing in July, 2012. Because petitioner is eligible for Institutional Medical Assistance, respondent shall review and determine the appropriate income allocation to petitioner's spouse in accordance with Chapter 18 of the Medicaid Eligibility Handbook. All actions shall be completed within 10 days of the date of this Decision.

### **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 20th day of February, 2013

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\sPeter McCombs  
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 February 20, 2013.

Sauk County Department of Human Services  
Division of Health Care Access and Accountability  
[cjs@schoberlaw.com](mailto:cjs@schoberlaw.com)