



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MRA/147106

PRELIMINARY RECITALS

Pursuant to a petition filed February 01, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance, a hearing was held on March 05, 2013, at Appleton, Wisconsin.

The issue for determination is whether petitioner must have an increase in spousal allocation to avert financial duress.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Vicki Schrimpf

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County and resides (since August 2012) in a nursing home/hospital in Milwaukee. His wife, the community spouse, resides in the family home.

2. Petitioner collects income including a tribal payment of \$5,878.66 per month, and social security disability in the amount of \$1,189 per month.
3. Petitioner’s wife collects gross earned income of \$2,076 every other week.
4. The following expenses claimed by petitioner are basic and necessary expenses for the maintenance of the community spouse:

MORTGAGE	1528
UTILITIES (We Energy)	200
PHONE	45
GASOLINE	120
VEHICLE MAINTENANCE	30
GAS/OIL	40
SEPTIC SERVICE	45
CAR INSURANCE	90
GROCERIES	400 (of 500 claimed)
MEDICATION	20
HUD LOAN	222
MISC. HOME MAINTENANCE	30
CREDIT CARD (<i>Min. Pymts</i>)	
Capitol One	95
Kohls	25
Menard’s	25
[REDACTED]	100
[REDACTED]	25
Visa	100

TOTAL \$3,140

5. The following expenses claimed by petitioner’s community spouse at the hearing are not basic and necessary for her maintenance:
 - a. \$382 for a Harley Davidson trike motorcycle (in addition to 2013 model year SUV).
 - b. \$100.91 for cell phone in addition to landline phone.
 - c. \$123.81 for Internet and cable television (allowed \$45 of the claimed total \$168.81 for land line phone as one phone line is a legitimate and basic necessity).
 - d. \$100 for dog food.
 - e. \$1150 per month for hotel in Milwaukee for the spouse to visit petitioner.
 - f. \$160 in gasoline (allowed \$120 of \$280 claimed total as majority of this was claimed for travel to Milwaukee to visit petitioner which is not a basic and necessary expense for maintenance of spouse).
 - g. Payments to creditors as a result of claimed identity theft.
6. The current income allowance allocated to the community spouse is the maximum \$2,898.

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 of \$2,898. See *MA Eligibility Handbook (MEH)*, 18.6.2, online at <http://www.emhandbooks.wi.gov/meh/>. In this case, the income of the community spouse is \$3,288.80. The Department therefore allocated \$0 from the institutionalized spouse's net income to her as the community spouse.

The community spouse argues that she cannot get by on her \$2,076 biweekly gross income alone which exceeds the \$2,898 monthly Maximum Allocation. The county agency does not have discretion to allocate income to her that would cause her "income plus allocation" total to exceed \$2,898. However, I have some limited discretion. The statute allows the allocation to be raised by an administrative law judge *to avert financial duress, created by exceptional circumstances*, for the community spouse. I conclude that petitioner's income, which exceeds the Maximum Allocation, is sufficient to cover the expenses of the community spouse reflected in this record. The total basic and necessary expenses total only \$3,140. That amount does not exceed petitioner's income based on this record.

The spouse has claimed many expenses which are not basic and necessary for her maintenance. Internet, cable TV, and a Harley Davidson motorcycle (in addition to a 2013 SUV) are not basic and necessary. These are luxuries and toys that many people in trying economic times have elected to forego. I have allowed the payments to creditors such as [REDACTED] and [REDACTED] (at a 25% interest rate!) because failure to pay these would result in collection action and likely financial duress. While it is ideal that the spouse visit petitioner as often as she wishes and that she stay in hotels when she does so, such trips are not basic or necessary for her maintenance. The amounts set forth in finding #4 ensure that the spouse does not become impoverished, that she has enough to eat and maintain a shelter, and then some. That is what the statute calls for. It does not call for her to maintain the same lifestyle that she has had in the past with the same material items. The spouse may elect to sell the Harley Davidson or the items purchased at [REDACTED] in order to finance trips to Milwaukee, or feed her dog. Or, she may forgo trips to Milwaukee to pay for the motorcycle. But, she already earns a sufficient income to pay for her *basic and necessary* expenses.

CONCLUSIONS OF LAW

Petitioner has not established that an increase in the spousal allocation is required to avoid financial duress.

THEREFORE, it is

ORDERED

That this appeal 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 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 10th day of April, 2013

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 10, 2013.

Outagamie County Department of Human Services
Division of Health Care Access and Accountability