



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MRA/150607

PRELIMINARY RECITALS

Pursuant to a petition filed July 11, 2013, under Wis. Stat. § 49.45(5), to review a decision by the Rock County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on August 28, 2013, by telephone. The record was held open one week to allow petitioner's wife to provide additional information regarding her monthly expenses.

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]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Pam Edmonds
Rock County Dept. of Social Services
P.O. Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. An application for MA was filed on petitioner's behalf in March, 2013. Petitioner was found to be eligible for nursing home MA. As of June 1, 2013, his monthly cost of care was set at \$592.49; it was slightly higher in May.

3. Petitioner's monthly income is \$2,917.49 per month.
4. Petitioner's wife receives \$618 per month social security. Her community spouse income allowance was set at \$2,898, so part of petitioner's income was allocated to her. The result was a monthly cost of care of \$592.49.
5. Petitioner's wife's necessary monthly expenses total approximately \$3,340 per month. Included in necessary expenses are a number of payments on medical bills, rent, utilities, a car payment, and a payment for a washer/dryer.

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 \$2,898. 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 \$2,898 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 petitioner's list of expenses. Petitioner's wife is asking that petitioner's entire patient liability be turned over to her. However, as noted in finding of fact no. 5, I can find that her monthly expenses amount to no more than \$3,340 per month. The list she provided totaled \$4,227 per month, but some of the numbers were not credible. For example, she listed \$110 per month as the cost for dish soap, laundry soap, garbage bags, and softener salt, and then \$100 per month for toiletries, on top of \$300 per month for food. Even allowing that she buys things for petitioner, those amounts seem wildly inflated. She wrote \$379 per month for fuel oil, but when I calculate it out even allowing for higher costs in the winter I come up with no more than \$220 per month. Her estimate of \$275 per month for gas seems high

considering that she drives only the 17-mile drive to the nursing home, the grocery store, and doctor appointments. I gave her \$200 per month for gas for the car and the lawn tractor.

Some of the expenses cannot be considered necessary. For example, as important as her monthly donations to church are to her, failure to make them would not cause her financial duress.

I conclude, therefore, that \$3,340 is the proper community spouse income allowance in this case. I note that petitioner's wife's own MA is ending and she may have to meet a deductible, which might cause higher medical expenses. I cannot base my determination on what might happen, however. If expenses increase she can request another hearing, but as it is petitioner's cost of care will be reduced substantially based just on this decision. I thus also suggest that petitioner's wife might inquire about the MAPP program, a Medicaid program with higher income limits.

CONCLUSIONS OF LAW

Petitioner's wife's monthly expenses to avoid financial duress total \$3,340.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to increase the monthly income allocation of petitioner's wife to \$3,340, retroactive to May 1, 2013, and to change the monthly patient liability accordingly. The county shall take the action within 10 days 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 13th day of September, 2013

\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 September 13, 2013.

Rock County Department of Social Services
Division of Health Care Access and Accountability