



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

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In the Matter of

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

DECISION

MRA/151324

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 13, 2013, under Wis. Stat., §49.455(8), to review a decision by the Green County Dept. of Human Services in regard to Medical Assistance (MA) through the Family Care Program, a hearing was held on October 15, 2013, by telephone. The record was held open 15 days for submission of additional evidence.

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

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

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

By: Kristi Baker  
Green County Dept. of Human Services  
N3152 State Road 81  
Monroe, WI 53566

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Green County.
2. Petitioner resides in an assisted living apartment and is a recipient of the Family Care Program, thus classifying her as institutionalized for financial eligibility purposes. Her husband lives at home; a 19-year-old daughter recently went away to college.

3. When the case was reviewed petitioner told his worker that he would not be claiming his daughter as a dependent on his taxes. Petitioner erred in that statement; he will claim his daughter.
4. Petitioner's monthly income is \$3,965.50 from social security and long-term disability. Her husband has monthly earnings of \$4,594 from employment.
5. Petitioner's husband necessary has monthly expenses totaling \$5,800.

### 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. The maximum allowance that can be set by the county is \$2,898. See MA Handbook, Appendix 18.6.2. The institutionalized person may divert some of his income to her community spouse rather than contributing to her 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.

In this case none of petitioner's income was diverted to her husband because his monthly income is higher than \$2,898. He has filed this appeal on to request that his monthly income allowance be increased so that some of petitioner's income can be diverted to him.

An administrative law judge (ALJ) can grant an exception to the 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 husband needs additional income on top of the \$2,898 already allowed to him.

I find that petitioner's husband needs \$5,800 per month to avoid duress. Petitioner and her husband are both in their early fifties, and their youngest child just started college. Petitioner's husband is employed and as a result his gross income is reduced by tax, social security, and insurance deductions. He has a \$1,141 monthly mortgage payment, utilities, student loan, and charge card payments. In addition he has to pay taxes on petitioner's disability income. The total of his list of expenses was \$6,286.78. I did not include in the total petitioner's housing because that amount is at issue in this appeal; if his income allowance is increased her monthly payment will decrease.

I did not allow the full \$6,286. I did not allow the payment for his adult son's Mobil credit card. I also reduced the necessary expenses because part of the student loan payment is for an adult child, and the US Cellular amount of \$274.59 is an extravagance for someone who already is allowed a land line, although I

did not cut the full US Cellular amount because I acknowledge that a cell phone is a necessity in today's society. I also reduced the grocery and clothing allowance. I thus will order that his community spouse income allotment be increased to \$5,800 per month, and the county shall re-determine petitioner's liability based upon that amount, effective August 1, 2013, the month he requested the change.

I note also that when petitioner told his worker that he would not be claiming his daughter as a dependent on his income taxes. In questioning it appears that he misunderstood tax law and whether he could claim her, and in his submission to me he said he would be claiming her. He should confirm that with Ms. Baker at the county agency, and if he does, the calculation should also include petitioner's daughter as a dependent. Since that change became effective September 1, 2013, this new calculation should take the daughter's status into consideration as this new calculation goes back to August 1.

### **CONCLUSIONS OF LAW**

Petitioner's husband requires \$5,800 per month to avoid financial duress.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to re-determine petitioner's monthly Family Care liability back to August 1, 2013, by increasing her husband's community spouse income allowance to \$5,800 and by including their daughter as a tax dependent if petitioner's husband confirms that he will claim her as a dependent. The county shall make the re-determination and inform petitioner of the result 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 8th day of November, 2013

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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 8, 2013.

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