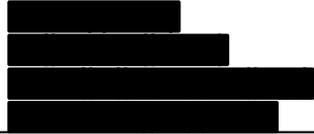




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MRA/151433

PRELIMINARY RECITALS

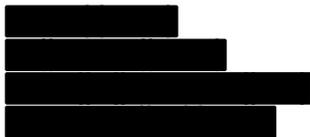
Pursuant to a petition filed August 20, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on September 19, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the Petitioner's spousal allocation may be increased.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Lori Rutzinski
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Waukesha County.
2. Petitioner's monthly income is \$2,174.90 in unearned income from Social Security and a pension. Petitioner's wife DR has Social Security income of \$1,069/month.

3. On August 7, 2013, the agency issued a Notice of Decision to the Petitioner informing him that he is eligible for MA nursing home long term care effective May 18, 2013 with a monthly patient liability cost of \$300.90 effective June 1, 2013. The agency calculated spousal allocation of \$1,829.

4. DR has monthly expenses as follows:

Medical equipment	\$ 78.00
Medical treatment	\$ 500.00
Car payment	\$ 300.00
(balance is \$10,322)	
Medications	\$ 24.00
Heating oil	\$ 250.00
Phone and TV	\$ 127.00
Property taxes	\$ 307.24
Gas credit card	\$ 100.00
Life insurance premium	\$145.80
Car insurance	\$ 58.33
Homeowners insurance	\$ 51.33
WE	\$ 150.00
Water	\$ 41.00
2 <sup>nd</sup> Mortgage	\$ 500.00
Groceries	\$ 100.00
Car maintenance	\$ 20.00
Misc. Household	\$ 100.00
Medicare premium	\$ 209.80
Total expenses	\$3,062.50

### DISCUSSION

Medical assistance rules require nursing home residents to “apply their available income toward the cost of their care.” Wis. Adm. Code § DHS 103.07(1)(d). However, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of an institutionalized person so that she does not fall into poverty. See Wis. Stat. § 49.455 and 42 U.S.C. §13964-5. The minimum monthly maintenance needs allowance currently is the lesser of \$2,898 or \$2,585 plus excess shelter costs. Medical Eligibility Handbook, § 18.6.2. Excess shelter costs are shelter costs above \$775.50. *Id.*

The needs allowance can be increased at a fair hearing. Because any additional amount given to the community spouse is a taxpayer-financed subsidy in the form of medical assistance, the law restricts the administrative law judge’s ability to raise the limit. Wisconsin law provides the following test for the exception:

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's monthly income allowance under sub. (4)(b).

Wis. Stat. § 49.455(8)(c).

Thus a hearing officer may increase the maximum allocation ceiling only by amounts needed to allow the community spouse to avoid financial duress and to meet necessary and basic needs. This means that certain expenses that are for desirable things are rejected. For example, the Division of Hearings and Appeals has long and consistently denied donations, including those to a church. See, e.g., DHA Decision Nos. MRA-45/#22021, MRA-32/22456, MRA-05/37611, MRA-13/45972, and MRA-14/22543.

Petitioner's wife provided evidence of her monthly expenses as listed in Finding of Fact #4 above. I find all of these expenses to be reasonable and necessary to meet minimum monthly needs. In particular, I note that the Petitioner has ongoing medical treatments for which she has a co-pay and deductible. She submitted examples of her previous month's medical expenses. Therefore, I have allowed \$500/month to ensure that she is able to meet those expenses. Based on the evidence of expenses submitted by the Petitioner, I conclude she requires \$3,062.50 to meet her minimum monthly needs.

### **CONCLUSIONS OF LAW**

The Petitioner requires \$3,062.50/month to meet her minimum monthly needs.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency with instructions that within 10 days of the date of this decision it reduce the Petitioner's share of his medical costs so that he can allocate a sufficient amount of his income to his spouse so that she can meet her \$3,062.50 minimum monthly needs. This decision shall be retroactive to the date the petitioner was first required to pay a share of his nursing home costs.

### **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 Milwaukee,  
Wisconsin, this 1st day of November, 2013

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\sDebra Bursinger  
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 1, 2013.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability