



FH  
[REDACTED]

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

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In the Matter of

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

DECISION

MRA/152100

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 12, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Barron County Department of Human Services in regard to Medical Assistance, a hearing was held on October 21, 2013, at Barron, Wisconsin.

The issue for determination is whether the petitioner is may allocate a greater share of his income to his spouse so that she can meet her minimum monthly needs.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

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

By: Cindy Slaton

Barron County Department of Human Services  
Courthouse Room 338  
330 E LaSalle Ave  
Barron, WI 54812

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Barron County.

2. The county agency determined that the petitioner must contribute \$1,310.91 toward his medical care each month.
3. The petitioner lives in a nursing home. His wife lives in the community.
4. The petitioner's monthly income is \$3,067.01 and his wife's is \$1,233.90.
5. The petitioner and his spouse owe approximately \$40,000 in credit card debt.
6. The petitioner's spouse claims the following monthly expenses:
 

a. Mortgage (includes insurance and taxes):	\$667.93
b. Electricity:	\$109
c. Heat:	\$110.74
d. Garbage:	\$23.75
e. Home repair:	\$318
f. Medical bills:	\$122
g. Telephone:	\$40
h. Gas:	\$110
i. Oil changes & repairs:	\$50.59
j. Auto insurance:	\$100
k. Health Insurance:	\$572
l. Food:	\$150
m. Clothing:	\$100
n. Medicare Part D:	\$10.80
o. Hair:	\$50
p. Cleaning:	\$40
q. Chase credit card:	\$197
r. US Bank credit card:	\$600
s. Sears Credit Card:	\$25
t. Capital One card:	\$116
u. GM Card:	\$198.86
v. Car Payment:	\$198.86

### **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 shelter expenses of the petitioner's spouse are less than \$775.50.

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.*

The facts are somewhat confusing. According to the testimony, each month the petitioner receives \$3,306.11 and his wife receives \$1,233.90 in unearned income. However, the budget his wife submitted indicates that he receives \$3,067.01. In addition, the agency set his contribution toward his medical care at \$1,310.91. If his income is \$3,306.11, he and his wife have \$4,540 in total income. Subtracting his \$1,310.91 contribution from this means that the agency set his wife's minimum monthly needs allowance at \$3,229.10, which is higher than what is allowed. The agency did not submit its calculations, so I do not know what figures it used. If the petitioner's income is \$3,067.01, his mortgage, taxes, insurance, and the standard utility allowance would make his \$1,310.91 contribution more in line with the standard minimum monthly needs allowance. *See Finding of Fact No. 6 and Medicaid Eligibility Handbook, § 18.6.2, referring to FoodShare Wisconsin Handbook, § 8.1.3.* I will assume that his income is \$3,067.01. However, any order will set his spouse's minimum monthly needs allowance, which means that the petitioner's contribution toward his medical care can be adjusted if his or his wife's income changes.

The petitioner's spouse prepared a budget in which she indicates she needs \$3,934.17 to meet her minimum needs. *See Finding of Fact No. 6.* What stands out is that over \$1,100 of this is dedicated to meeting minimum credit card payments each month. The petitioner's spouse testified that they have over \$40,000 in credit card debt. Without this, the petitioner's spouse could live on an amount close to the standard allowance. I have reviewed the expenses and questioned the petitioner's spouse about them. I was concerned about the \$50 she requested to get her hair done. She explained that she has a torn rotator cuff that prevents her from washing her own hair. While this still seems like a large amount, it is offset by the absence of any request for cable or satellite television service. I do find that her request is reasonable, and will increase her minimum monthly needs allowance to \$3,934.17.

If the petitioner's income or expenses change, she should report this to the county agency. If her needs increase, she will have to file for a new fair hearing.

### **CONCLUSIONS OF LAW**

The petitioner requires \$3,934.17 to meet her minimum monthly needs each month..

**THEREFORE, it is**

**ORDERED**

That this matter is remanded the county 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 \$3,934.17 minimum monthly needs. This decision shall be retroactive to September 1, 2013.

### **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 22nd day of November, 2013

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\sMichael D. O'Brien  
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 22, 2013.

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