



FH
[REDACTED]

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

In the Matter of

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

DECISION

MRA/152380

PRELIMINARY RECITALS

Pursuant to a petition filed September 23, 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 November 11, 2013, at Neenah, Wisconsin. The record was held open for a period of 10 days to allow petitioner's spouse to submit further budget information. Said information was timely received.

The issue for determination is whether the income allowance to the community spouse must be increased in order to alleviate duress caused by exceptional circumstances.

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, Room 651
Madison, Wisconsin 53703

By: Melanie Dubnicka

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

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County and resides in a nursing home. His wife, the community spouse, resides in the family home.
2. Petitioner collects income including a pension of \$608.00 per month, and social security in the amount of \$1,883.00 per month.
3. Petitioner's wife collects \$688.00 per month in social security, \$702.00 per month in earned income, and \$33.77 per month in interest from a promissory note.
4. The following expenses are basic and necessary monthly expenses for the maintenance of the community spouse, which have been verified by petitioner:

MORTGAGE	500.22
PROPERTY TAX	425.00
HO INSURANCE	65.20
CAR PAYMENT	252.04
UTILITIES	211.00
FOOD	75.00
MEDICAL COSTS, CO-PAYS	150.00
CABLE	163.64
CREDIT CARDS	400.00
LIFE INSURANCE	100.00
TOTAL	\$2,342.10

5. The current income allowance allocated to the community spouse is the maximum \$2,898.00.

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 \$2,898.00. 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 \$1,424.24. The Department therefore allocated \$1,473.76 from the institutionalized spouse's net income to her as the community spouse.

The community spouse argues that she cannot get by on the \$2,898.00 Maximum Allocation. The county agency does not have discretion to allocate income to her that would cause her "income plus allocation" total to exceed \$2,898.00. 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 the Maximum Allocation is sufficient to cover the expenses of the community spouse **reflected in this record**. The petitioner's spouse did not establish any monthly expenses in excess of the current maximum allocation of \$2,898.00. At hearing, the petitioner was requested to provide a monthly accounting, along with documentation to support the claimed expenses. A budget was not received; instead, the submission consisted of September and October bank statements and various bills, some of which were alluded to in testimony. No summary or explanation accompanied the bank statements, which might have explained the myriad withdrawals and checks. While I appreciate that the petitioner's wife is not an accountant, neither am I. The petitioner has the burden here, and I

simply cannot find, based on the record before me, that she has met that burden. In calculating her basic and necessary expenses (*see* Finding of Fact #4), I included various expenses not claimed with specificity by petitioner in her written submissions (utilities, medical costs and co-pays). Nonetheless, the total basic and necessary expenses that I was able to substantiate total only \$2,342.10. That amount does not exceed the current allocation of \$2,898.00. The petitioner testified that her monthly expenses are between 6,000.00 and 7,000.00. I was unable to establish anywhere near that amount based on the record that petitioner provided.

In keeping the Maximum Allocation at \$2,898, I accept as accurate the budget numbers provided by the respondent in its uncontroverted exhibits.

Nothing in this decision shall preclude the petitioner from seeking an increase in the spousal allocation in the future. Should she wish to pursue this matter anew, I would encourage the petitioner to prepare a detailed monthly budget establishing each and every of her monthly expenses.

CONCLUSIONS OF LAW

Petitioner has not established that any increase in the maximum allocation is required to avoid duress.

THEREFORE, it is ORDERED

That the matter 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, Room 651, 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 6th day of December, 2013

\sPeter McCombs
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 December 6, 2013.

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