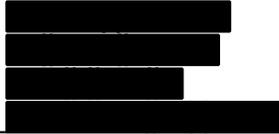




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MRA/153590

PRELIMINARY RECITALS

Pursuant to a petition filed November 15, 2013, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a telephonic hearing was held on December 19, 2013, at Milwaukee, Wisconsin. The record was held open post-hearing to allow petitioner's representative time to submit additional verification of expenses, which were received.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Laura Kujawa
Brookfield, WI 53045

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Chris Sobczak
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County. He was institutionalized in July 2013 and his spouse remains in the community. He applied for MA in September 2013.

2. Petitioner's gross monthly income includes \$537.50 in Social Security benefits. Petitioner's community spouse's gross monthly earnings are \$3565.40.
3. On October 7, 2013 the agency issued a notice to petitioner stating that effective November 1, 2013 he would have a patient liability in the amount of \$492.50.
4. Petitioner's community spouse's allowable monthly expenses total \$3939.25 per month.

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 \$2898 or \$2585 plus excess shelter allowance. See *MA Eligibility Handbook (MEH)*, §§18.1, 18.6 and 39.4.2. In this case, the gross income of the community spouse is \$3565.40. However, the community spouse is employed, so her payroll taxes should be subtracted from her gross income, and are included in the expenses list below. The agency did not allocate any of petitioner's income to his spouse because she was already above the maximum allocation.

The community spouse maintains that she cannot get by on her income alone. The county agency does not have discretion to allocate income to her that would cause her "income plus allocation" total to exceed \$2898. However, I have some limited discretion and have determined that her income is short of what she needs to cover basic living expenses. The statute allows the allocation to be raised to avert financial duress, created by exceptional circumstances, for the community spouse. I conclude that the Maximum Allocation must be raised to \$3939.25 to avert financial duress. The acceptable monthly expenses identified by the community spouse are as follows:

Mortgage	941.83
Health Insurance	267.93
Telephone	55.87
Gas for vehicle	129
Car/license plate registration	95
Car Insurance	74.75
Personal care (hair, clothing, etc.)	40
Groceries	301
Gas & Electric	158
Water	24.23
Property Tax	327.65
Homeowners Insurance	95.75
Credit card(s)	314
Dental Insurance	31.73
Vision Insurance	10.40
Loan 1	215.08
Loan 2	125.47
Federal withholding	284.06
Wis. withholding	185.63
Soc. Security tax	212.25
Medicare tax	<u>49.62</u>
TOTAL	\$3939.25

In setting the Maximum Allocation at \$3939.25, I accepted as accurate the budget numbers provided by the community spouse in her exhibits, and as further explained post-hearing.

A few expenses cannot be considered a basic living expense, and therefore were not included in the list of allowable expenses above. To determine whether an expense is basic, an ALJ looks at whether an expense is either mandatory (*e.g.*, income tax) or essential for survival (*e.g.*, food). Thus, the cable TV expense was disallowed. I added in a personal care allowance as that was not provided.

Based on the foregoing, I will order that the community spouse income allowance be raised to \$3939.25 per month. The agency shall then change petitioner's monthly patient liability based upon the new allowance. The agency is also reminded to review these costs in an annual review to determine which if any debts (*e.g.*, loan payment, credit card) have been paid off or reduced.

CONCLUSIONS OF LAW

Due to exceptional circumstances, the petitioner's wife requires a \$3939.25 Maximum Community Spouse Income Allocation retroactive to November 1, 2013.

THEREFORE, it is

ORDERED

That the petition for review herein be remanded to the agency with instructions to increase petitioner's community spouse's Maximum Community Spouse Income Allocation to \$3939.25 effective with the November 1, 2013 cost of care liability determination, to change the monthly patient liability accordingly, and to issue a notice of decision regarding same. This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition 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 Milwaukee,
Wisconsin, this 31st day of January, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on January 31, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability