



FH
[REDACTED]

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

In the Matter of

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

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed December 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 February 11, 2014, at Waukesha, Wisconsin.

The issue for determination is whether an increase in the Minimum Monthly Maintenance Needs Allowance is warranted in this case, such that the Community Spouse Income Allocation may be increased.

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: Karen Pearson, Economic Support Specialist
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. On November 20, 2013, the Moraine Lakes Consortium sent Petitioner a notice indicating that as of November 1, 2013, he was eligible for Family Care benefits with a monthly cost share of \$1,379.86. (Exhibit 4)
3. Petitioner's daughter/POA filed a request for fair hearing on behalf of the Petitioner. The request was received by the Division of Hearings and Appeals on December 20, 2013. (Exhibit 1)
4. Petitioner's gross income is \$3,609.77 per month from his pension. (Exhibit 2, pg. 5 and 3)
5. Petitioner has a community spouse. Her gross income is \$950.00 per month. (Exhibit 5)

DISCUSSION

The Petitioner filed an appeal seeking an increase in the Community Spouse Income Allocation above the \$1645.91 currently calculated by Waukesha County Health and Human Services.

State and federal medical assistance laws contain provisions that allow an institutionalized person to allocate some of his income to his spouse so that she does not fall into poverty. *See* Wis. Stat. § 49.455 and 42 U.S.C. §13964-5; also see *MEH §§18.1 and 18.6.1*. This is called a Community Spouse Income Allocation or CSIA. (Id.)

Generally speaking, the Community Spouse Income Allocation is calculated by taking the Minimum Monthly Maintenance Needs Allowance (MMMNA) and subtracting from that amount, the Community Spouse's gross monthly income. *MEH §§18.1 and 18.6.1*.

The MMMNA at the time in question was the **lesser** of \$2,898 or \$2,585 plus excess shelter costs. *MEH § 18.6.2*. Excess shelter costs are shelter costs above \$775.50. *Id.* Administrative law judges (ALJs) have the authority to increase the CSIA above the MMMNA when the MMMNA is insufficient to meet a particular community spouse's basic maintenance needs and when there exist "exceptional circumstances resulting in financial duress" for the community spouse. *Wis. Stat. §49.455(8)(c); Wis. Admin. Code §DHS 103.075(8)(c); MEH §18.6*. "Exceptional circumstances resulting in financial duress" means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs". *Wis. Admin. Code §DHS 103.075(8)(c); emphasis added*.

I. THE INITIAL MMMNA DETERMINATION PER *MEH 18.6.2*

In Petitioner's case, the agency determined the MMMNA to be \$2,595.91, based upon the provisions of *MEH § 18.6.2*. (See Exhibit 5) However, this does not appear to be correct.

Community spouse shelter costs include the community spouse's expenses for:

1. Rent
2. Mortgage principal and interest
3. Taxes and insurance for the principal place of residence. This includes renter's insurance.
4. Any required maintenance fee if the community spouse lives in a condominium or cooperative (i.e. Condo association fees)
5. The standard utility allowance established under the FoodShare program.

MEH § 18.6.2

Applying the foregoing to Petitioner's spouse, her shelter costs are as follows:

\$260.00 Condo Association Fees
+\$22.67 Condo Insurance (on the structure)

[REDACTED]

+ \$267.13 Property Tax
 + \$450.00 Standard Utility Allowance from the FoodShare Wisconsin Handbook §8.1.3

	\$999.80 Total Monthly Shelter Costs
-	\$775.50
	\$224.30 Excess Shelter Costs

\$2585 + \$224.30 = \$2809.30 MMMNA

\$2809.30 is less than \$2898; so the MMMNA should be \$2809.30 per MEH 18.6.2.

II. SHOULD THE MMMNA BE INCREASED BEYOND \$2809.30, DUE TO THE SPOUSE'S MONTHLY EXPENSES?

The Petitioner's daughter/POA provided testimony concerning the spouse's monthly living expenses; most of the listed expenses were also supported by documentation in Exhibits 2 and 7.

Weekly hair styling = \$20.00	\$80.00 a month
Hair cut every six weeks = \$35.00	\$26.25 per month (9 haircuts a year)
Perm = \$65 every three months	\$21.67 per month
Milwaukee Journal Sentinel \$63.48 every four months	\$15.87 per month
Medicare Premium \$157.35 quarterly	\$52.45 per month
Condo Association Fees	\$260.00 per month
Personal Liability Umbrella Policy = \$345 annual premium	\$28.75 per month
Condo Insurance = \$272.00 annual premium	\$22.67 per month
Auto Insurance = \$552 annual premium	\$46 per month
Pro Health bill \$104.12	\$8.68 per month (over 12 month)
Kinex Medical Company = \$150.00	\$12.50 per month (over 12 months)
Household Supplies from Sam's Club = \$46.57 every two weeks	\$93.14 per month
Gasoline for the Spouse's car = \$51.30 every two weeks	\$102.60 per month
Tax Prep Fees = \$165	\$13.75 per month over 12 months
Carpet cleaning \$283.77 annually	\$23.65 per month
Garage Door Repair \$90.00	\$7.50 per month over 12 months
Medicare Part B Deductible = \$147 annually	\$12.25 per month over 12 months
Eye Surgery = \$264.37	\$22.30 over 12 months
Attorney's Fees = \$1000	\$83.33 per month
Property Taxes	\$267.13 per month
Prescription Medication	\$25.00 per month
Grocery Shopping	\$425.00 per month
Other home repair/maintenance	\$50.00 per month
Car repair/maintenance	\$50.00 per month
Water/Sewer bill = \$170.00 quarterly	\$56.67 per month
Electric / Gas	\$186.05 per month
Time Warner Cable (phone service)	\$88.71 per month
Life alert system	\$30.00 per month
Safety Deposit Box	\$35.00 per month

Gifts/cards/stamps \$300 annually	\$25.00 per month
Total Monthly Expenses:	\$2171.92

Not all of the expenses listed are allowable, but even if all of the listed expenses are taken into consideration, Petitioner's total monthly expenses work out to be \$2171.92. This is less than the MMMNA of \$2809.30 that should have been allowed in this case. As such, there is no basis to increase the MMMNA above what was allowed by MEH §18.6.2.

III. THE COMMUNITY SPOUSE INCOME ALLOCATION

The agency calculated the CSIA to be \$1645.91, but this calculation was based upon an incorrect MMMNA of \$2595.91.

The correct MMMNA should have been \$2809.30. As such, the CSIA calculation should have been as follows:

\$2809.30 MMMNA
-\$950.00 Spouse's monthly gross income
<hr/>
\$1859.30 Community Spouse Income Allocation

CONCLUSIONS OF LAW

1. The agency incorrectly calculated the MMMNA. The correct MMMNA should have been \$2809.30.
2. The CSIA should have been \$1859.30.

THEREFORE, it is

ORDERED

That the agency re-determine Petitioner's cost-share, using the correct CSIA of \$1859.30 per month, effective November 1, 2013 forward. The agency shall issue a refund, in full, to Petitioner's spouse for the difference. The agency shall take all administrative steps necessary to complete these tasks 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, 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 5th day of March, 2014

\sMayumi M. Ishii
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 March 5, 2014.

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