



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

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In the Matter of

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

DECISION

MRA/155029

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 27, 2014, 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 March 25, 2014, at Waukesha, Wisconsin.

The issue for determination is

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

[REDACTED]

Respondent:

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

By: Karen Pearson

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 is eligible for nursing home MA. As of March 1, 2014, his monthly cost share was set at \$3,423.28.

3. Petitioner's monthly income is \$3,860.18. Petitioner's wife's monthly income is \$2,948.99. None of the Petitioner's income has been allocated to his wife.
4. Petitioner's wife's necessary monthly expenses total approximately \$4,603.88 per month.

### DISCUSSION

Wis. Stat., §49.455 is the Wisconsin codification of 42 U.S.C. s.13964-5 (MCCA). Among other things, the "spousal impoverishment" provisions at sec. 49.455 direct the agency to establish an income allowance for the community spouse of an institutionalized person. That allowance set by the county, based upon petitioner's housing costs, is \$2,898. See MA Handbook, Appendix 18.6.2. The institutionalized person may divert some of his income to his community spouse rather than contributing to his cost of care. The amount of the diverted income, when combined with the spouse's income, cannot exceed the maximum allocation determined by the county. Any income of the institutionalized spouse that is not allocated to the community spouse or the personal needs allowance must be paid to the nursing home as the person's cost of care share.

An administrative law judge (ALJ) can grant an exception to this limit on income diversion. The ALJ may increase the income allowance following a fair hearing. The ALJ does not have unfettered discretion in creating an exception to the maximum allocation ceiling, however. The relevant statutory provision states that the test for exception is as follows:

- (c) 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 monthly income allowance under sub. (4)(b).

Wis. Stat., §49.455(8)(c). Thus an ALJ may augment the maximum allocation ceiling only by amounts needed to alleviate financial duress, to allow the community spouse to meet necessary and basic maintenance needs.

The Petitioner's wife presented evidence of her monthly expenses at the hearing. I have reviewed that list of expenses:

Electric utilities	\$ 46.00
Cell phone	\$ 71.00
TV/Internet	\$ 144.00
Auto and home insurance	\$ 90.41
Life insurance – funeral	\$ 26.00
Life insurance for Petitioner	\$ 17.34
Medicare supplement	\$ 146.27
Medicare drug supplement	\$ 44.10
Long term care insurance	\$ 84.37
Dental insurance	\$ 5.50
Medicare supp. for Petitioner	\$ 328.25
Medicare drug supp. for Petitioner	\$ 102.40
Vehicle loan	\$ 529.00
Vehicle license	\$ 6.36
Gas	\$ 167.00
Vehicle Maintenance	\$ 80.35

AAA insurance	\$ 6.25
Doctor	\$ 4.10
Eye dr. and glasses	\$ 19.00
Dentist	\$ 21.50
Podiatrist	\$ 8.00
Prescriptions and OTC medications	\$ 256.67
Income tax preparation	\$ 136.00
Hair	\$ 45.00
Clothing	\$ 11.00
Newspaper subscriptions	\$ 27.75
Charitable donations	\$ 158.00
Rent expense	\$1,675.00
Meals at senior apartment	\$ 200.00
Groceries & food	\$ 220.00
Entertainment	\$ 99.00
Organization dues	\$ 16.20
Officer expenses for charitable groups	\$ 127.34
Miscellaneous household	\$ 113.00
Gifts	<u>\$ 80.00</u>
Total Monthly Expenses	\$5,112.17

As noted above, 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. [REDACTED]

In reviewing the Petitioner's wife's list of expenses, I conclude that the expenses for newspaper subscriptions, charitable donations, entertainment, organization dues, officer expenses for organizations and gift purchases do not meet the standard of "necessary and basic" needs. The remaining expenses appear to meet the standard and appear to be reasonable. Thus I conclude that the Petitioner's wife requires \$4,603.88/month to meet her minimum monthly needs. I will remand this to the agency with instructions to allocate a sufficient amount of the Petitioner's income to his wife to meet her monthly need of \$4,603.88/month.

### CONCLUSIONS OF LAW

The Petitioner's wife requires an allocation of income from the Petitioner to meet her monthly expenses in the amount of \$4,603.88/month.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency to take all administrative steps necessary to allocate a sufficient amount of Petitioner's income to his wife so that she can meet her \$4,608.88 minimum monthly needs. This action shall be completed within 10 days of the date 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 8th day of May, 2014

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\s\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 8, 2014.

Division of Health Care Access and Accountability



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Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

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