



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

In the Matter of

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

DECISION

MRA/155055

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 Brown County Human Services in regard to Medical Assistance, a hearing was held on April 22, 2014, at Green Bay, Wisconsin. A hearing set for March 13, 2014, was rescheduled at the petitioner’s request. The record was held open to allow petitioner to submit additional information.

The issue for determination is whether all or a portion of the petitioner’s income should be “allocated” (disregarded) under spousal impoverishment provisions.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Carol Shimek
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. The petitioner has lived in a nursing home since December, 2012. He filed an application for Institutional /Long Term Care MA in February, 2013, which was denied. A subsequent application was approved in December, 2013, with backdated coverage to June, 2013; petitioner's patient liability was assessed at \$3,205.94.
3. Petitioner's monthly income is \$3,250.94 (Social Security \$2,142.00 and pension \$1,108.94). After subtraction of the \$45 statutory personal allowance, the Department determined that the petitioner had \$3,205.94 available to contribute toward the cost of his nursing home care.
4. The petitioner has a spouse, DC, residing in the community. She works as a Nurse Practitioner, and earns \$41.83/hour; she has average gross monthly earned income of \$6,692.80. DC has struggled with cancer, which is currently in remission. DC last utilized FMLA leave in 2012, which was related to a cancer flare-up.
5. The Maximum Community Spouse Income Allocation is \$2,898. Because the spouse's gross income exceeded the \$2,898 maximum allocation amount, the Department calculated that none of the institutionalized spouse's income would be allocated to her.
6. DC has identified living expenses at hearing that total more than \$7,093.21 monthly.
7. Of the monthly expenses referred to in Finding #6, **\$7,093.21**, are reasonable, basic and necessary living expenses. The petitioner has atypical expenses for the spouse of a nursing home resident in that (1) they incurred a large amount of debt prior to the nursing home admission, (2) DC's medical issues have imposed a significant financial burden on the family, (3) petitioner still has a mortgage, and (4) DC is employed, and therefore pays income taxes.

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, s/he may allocate some of his income to the community spouse. See *MA Eligibility Handbook (MEH)*, 18.6.2, online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. Because DC's gross income exceeds the maximum community spouse income allocation (\$2,931.00), the respondent concluded that no income allocation was permitted to DC.

The community spouse argues that she cannot get by without an allocation. The county agency does not have discretion to allocate income to her that would cause her "income plus allocation" total to exceed \$2,931.00. However, I have some limited discretion and have determined that DC's income is short of what she needs to cover basic living expenses. The statute allows the allocation in order to avert financial duress, created by exceptional circumstances, for the community spouse. I conclude that the Maximum Allocation must be raised to \$7,093.21.00, to avert financial duress. Exceptional circumstances are present here: (1) the petitioner incurred a large amount of debt prior to institutionalization, (2) DC's medical issues have imposed a significant financial burden on the family, (3) petitioner still has a mortgage, and (4) DC is employed, and therefore pays income taxes. The acceptable basic monthly expenses verified by the community spouse are as follows:

Mortgage	\$1467.00
Utilities	\$ 236.00
Phone and Internet	\$ 404.00 ¹
Home maintenance	\$ 150.00
DC medical expenses	\$ 609.00
Vehicle	\$ 440.33
Santa Maria debt	\$1000.00
Family Funeral debt	\$ 200.00
Student Loan debt	\$ 640.72
Attorney debt	\$ 200.00
Dental and medical debt	\$ 402.83
Pet expenses	\$ 229.25
Tax Debt	\$ 784.00
Clothing/toiletries	\$ 80.00 ²
 TOTAL	 \$7093.21

In setting the Maximum Allocation at \$7093.21 from Septmeber, 2013, forward, I accepted as accurate the budget numbers provided by the community spouse in her exhibits. The county agency may leave this \$7093.21 Maximum Allocation in place indefinitely (or the Maximum Allocation established in the *Handbook* at the time, if higher) unless the petitioner's spouse's circumstances change. The higher amount is to allow the petitioner to pay off the existing nursing home and other debts, as there is no benefit to either the petitioner or the Department in having her deal with collection agencies. Also, the incurred bills (*e.g.*, medical and nursing home costs for DC and petitioner) were not frivolous.

Petitioner's representative argues that DC's *net* income should be utilized in calculating the appropriate allocation. No authority is provided in support of this proposition, and the Medicaid Eligibility Handbook instructs to utilize gross income in conducting these calculations. See, *Medicaid Eligibility Handbook* §18.6.2.

Petitioner's spouse also raised the issue of impending cataract surgery and her anticipated financial obligations related thereto. Petitioner's Exhibit 8 was timely submitted post-hearing, and provided the basis for petitioner's spouse's request that this future financial obligation be included in petitioner's budget. At this time, I am unable to include these expenses in calculating the appropriate allocation, as they have not yet been incurred. It may very well be that the cataract procedures are a certainty for petitioner, but until petitioner has a certain and specific bill, inclusion of the not-yet-existing obligation is premature. Petitioner can request that the respondent consider these expenses when they have, in fact, been incurred.

Finally, Petitioner's representative argues that petitioner's patient liability for June, July and August of 2013 should be reduced to zero, due to garnishments of petitioner's spouse's income in those months. I note that DC's paychecks during this period were garnished as follows:

¹ Hearing testimony revealed that petitioner's two adult daughters' telephones are included in the telephone plan. The daughters reimburse, or are expected to reimburse, petitioner at the rate of \$40.00 each, per month. As such, \$80.00 was subtracted from this monthly expense.

² Although expenses for clothing and personal toiletries were not included in the petitioner's exhibits, it is obvious that the spouse must incur them. I therefore included an \$80 monthly cost for these items.

June 1, 2013	\$525.25
June 15, 2013	\$503.30
June 29, 2013	\$554.94
July 13, 2013	\$544.61
July 27, 2013	\$503.30
August 10, 2013	\$518.79
August 24, 2013	<u>\$ 71.21</u>
Total	\$3,221.40

Exhibit 6.

On average, during the months of June, July, and August of 2013, DC's household expenses included \$1,073.80 in medical expenses pertaining to debt owed to [REDACTED]. As such, petitioner's maximum allocation must be increased by that amount for those three months. Respondent raised no objection to the inclusion of these expenses.

CONCLUSIONS OF LAW

1. Due to exceptional circumstances, the petitioner's spouse required \$8,167.01 to live on in June, July and August, 2013; her allocation must be adjusted accordingly, effective June, 2013.
2. Due to exceptional circumstances, the petitioner's spouse requires \$7,093.21 to live on; her allocation must be adjusted accordingly, effective September, 2013.

THEREFORE, it is

ORDERED

That the petition for review herein be *remanded* to the county agency with instructions to (1) increase the petitioner's monthly Maximum Community Spouse Income Allocation to \$8,167.01 for June, July and August, 2013, effective with the June 2013, cost of care liability determination; and (2) increase the petitioner's monthly Maximum Community Spouse Income Allocation to \$7,093.21, effective September, 2013. This action shall be taken within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of June, 2014.

\sPeter McCombs
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 2, 2014.

Brown County Human Services
Division of Health Care Access and Accountability
Attorney [REDACTED] [REDACTED]