



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

In the Matter of:

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MRA/155255

PRELIMINARY RECITALS

Pursuant to a petition filed February 3, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Oneida County Department of Social Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on April 24, 2014. At petitioner's request a Hearing scheduled for March 25, 2014 was rescheduled.

The issue for determination is whether petitioner has established that his wife needs income above the level provided by the Minimum Monthly Maintenance Needs Allowance ["MMMNA"] in order to avoid a situation that would result in her not being able to provide for her own necessary and basic maintenance needs.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] (not present at April 24,
2014 Hearing)
c/o [REDACTED]
[REDACTED]
[REDACTED]

Represented by:

[REDACTED], petitioner's wife
[REDACTED]
[REDACTED]

Respondent:

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

By: Heidi Nehls, ESS
Oneida County Department of Social Services
Oneida Avenue
PO Box 400
Rhinelander, WI 54501

OTHER PERSON PRESENT:

[REDACTED], petitioner's sister-in-law

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 67 years old) is a resident of Oneida County, Wisconsin.
2. Petitioner now resides with his wife in their home in the community in Oneida County, Wisconsin.
3. Petitioner resided in the nursing home from February 2013 to March 3, 2014; petitioner seeks to reallocate income from himself to his wife for the months of January 2014 and February 2014 due to back due bills.
4. Petitioner's wife's MMMNA (without a Fair Hearing or Circuit Court Order) while petitioner was residing in the nursing home during January 2014 and February 2014 was at least \$2,898.00.
5. Petitioner does not claim any specific amount of monthly expenses for his wife but did submit 19 various bills as follows:

Recurring expenses:

- (i) \$59.00 per month; Kohl's;
 - (ii) \$84.00 per month; Chase;
 - (iii) \$64.00 per month; Direct Merchants Bank;
 - (iv) \$60.00 per month; unidentified bill;
 - (v) \$84.58 per month; Frontier Communications;
 - (vi) \$3,727.37, not a monthly bill; 2013 Real Estate Tax Bill (amounts to \$310.61 per month);
 - (vii) \$484.56 per month; ADP COBRA Administration;
- TOTAL of the above 7 recurring expenses: \$1,146.75 per month.

Appear to be one-time expenses:

- (a) \$2,316.52; WPS;
- (b) \$22.50; J & B Medical Supply, Inc.;
- (c) \$529.75; WestBend;
- (d) \$840.59; Alliance Collections Agencies, Inc.;
- (e) \$438.28; Marshfield Clinic;
- (f) \$810.42; Ministry;
- (g) \$500.00; Ministry Health Care;
- (h) \$134.60; Home Medical Products & Services, LLC;

- (i) \$824.00; Marshfield Clinic;
- (j) \$450.00; CBC.
- (k) \$500.00; Rennes Health & Rehab Center; and,
- (l) \$3,768.07; Rennes Health & Rehab Center.

TOTAL of the above 12 apparently one-time expenses: \$11,134.73.

DISCUSSION

When an MA recipient is in a nursing home all of that recipient's income, with certain limited exceptions, must be used to pay nursing home costs. MA pays any nursing home costs which exceed the recipient's income.

Many MA recipients who are nursing home residents are married and have spouses who live in the community. In these cases, the law recognizes that requiring all of the recipient's income to be used to pay nursing home costs may leave the community spouse in poverty. In order to prevent the impoverishment of the community spouse, the law allows the community spouse to receive the lesser of the following as monthly income: \$2,898.00; or, \$2,585.00 plus excess shelter allowance. This is known as the *Minimum Monthly Maintenance Needs Allowance* ["MMMNA"]. Wis. Stat. §§ 49.455(4)(a)2. & (c) (2011-12); Wis. Admin. Code § DHS 103.075(6)(b)1. & (c)2. (December 2008); *Medicaid Eligibility Handbook* ["MEH"] 18.6.2.Section A1. In this case, petitioner's husband's current MMMNA was at least \$2,898.00.

The MMMNA can be increased 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 MMMNA. Wis. Stat. § 49.455(8)(c) (2011-12); Wis. Admin. Code § DHS 103.075(8)(c) (December 2008); MEH 18.6.2.Section A1. The phrase *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) (December 2008); MEH 18.6.2.Section A1. Thus, the burden is on the person seeking an increase in the MMMNA. It must be established that the community spouse needs income above the level provided by the MMMNA in order to avoid a situation that would result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs.

Petitioner submitted bills for recurring expenses in the total amount of \$1,146.75 per month. First, this is not in excess of petitioner's wife's MMMNA of \$2,898.00. Thus, petitioner has failed to establish that his wife needs income above the level provided by the MMMNA. Second, it is not clear that all of the recurring bills submitted by petitioner can be allowed. One is an unidentified bill. Additionally, only necessary and basic maintenance needs for petitioner's wife can be allowed -- expenses for petitioner himself cannot be allowed. Claimed necessary and basic maintenance expenses must be solely for petitioner's wife and not for any other person.¹

¹ It is noted, however, that when calculating the nursing home liability amount that must be paid by petitioner the amount of petitioner's medical and remedial care expenses (including health insurance premiums) is

Petitioner also submitted bills for what appear to be one-time expenses in the total amount of \$11,134.73. These bills, in the absence of additional information, cannot be used to increase the MMMNA for petitioner's wife. First, it is not clear what some of these bills are for. Second, it is not clear what the monthly payment on these bills would be. Third, it is apparent that at least some of these bills are for recurring expenses of petitioner (not for petitioner's wife) during the time period in question (such as the bills for Rennes Health & Rehab Center).

As explained above, the burden is on the person seeking an increase in the MMMNA. That person must establish that the community spouse needs income above the level provided by the MMMNA in order to avoid a situation that would result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs. Petitioner has failed to do so.

CONCLUSIONS OF LAW

Petitioner has not established that his wife needs income above the level provided by the MMMNA in order to avoid a situation that would result in her not being able to provide for her own necessary and basic maintenance needs.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

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.

allowed to be deducted from petitioner's income. See, Wis. Stat. § 49.455(4)(a)4. (2011-12); Wis. Admin. Code § DHS 103.075(6)(c)4.b (December 2008); MEH 18.6.4.Section C.6.

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 20th day of May, 2014

\sSean P. Maloney
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 May 20, 2014.

Oneida County Department of Social Services
Division of Health Care Access and Accountability