



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

In the Matter of

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

DECISION

MRA/155436

PRELIMINARY RECITALS

Pursuant to a petition filed February 10, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance (MA), a hearing was held on March 27, 2014, at Waupaca, Wisconsin. The hearing record was held open for 7 days for a submission from the petitioner, which was received.

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]
By: [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Pamela Kolb, ES Spec.
Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The petitioner has lived in a nursing home since June 2013. He filed an application for Institutional /Long Term Care MA in August, 2013, with a request for backdated eligibility. On **October 1, 2013**, the agency issued written notice to the petitioner advising that he would have to contribute \$1,119.77 toward his nursing home care expense (the balance is paid for by MA) beginning with June 2013. The patient liability contribution was re-computed beginning January 1, 2014 (due to changed income) and declared to be \$1,009.77 monthly from January 2014, forward. That October notice also advises the petitioner that only the \$45 personal allowance and a \$422.95 spousal allocation would be subtracted from his income in this nursing home liability computation.
3. The petitioner has a spouse, D. [REDACTED], residing in the community. She has an average gross monthly income of \$2,475.08, all of it earned income. The Maximum Community Spouse Income Allocation is \$2,898. Because the spouse's gross income was under the \$2,898 maximum allocation amount by \$422.92, the Department automatically determined that \$422.92 of the institutionalized spouse's income would be allocated to her.
4. The petitioner had gross monthly income of \$1,587.69 in 2013. After subtraction of the \$45 statutory personal allowance and the \$422.92 Community Spouse Income Allocation, the Department determined that the petitioner had \$1,119.77 in 2013 available to contribute toward the cost of his nursing home care.
5. Ms. [REDACTED] has identified living expenses at hearing that total more than \$3,671.
6. Of the monthly expenses referred to in Finding #5, **\$3,671.00**, are reasonable, basic and necessary living expenses. The petitioner has atypical expenses for the spouse of a nursing home resident in that (1) she is employed, and therefore pays income taxes, and (2) she visits her husband at a facility that is distant from her residence.

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 if the community spouse's gross monthly income does not exceed the Maximum Community Spouse Income Allocation of \$2,898. See *MA Eligibility Handbook (MEH)*, 18.6.2, online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. In this case, the gross income of the community spouse is \$2,475.08. The Department therefore allocated \$422.92 from the institutionalized spouse's net income to her as the community spouse.

The community spouse argues that she cannot get by without a larger allocation. The county agency does not have discretion to allocate income to her that would cause her "income plus allocation" total to exceed \$2,898. However, I have some limited discretion and have determined that Ms. [REDACTED]'s 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 **\$3,671 for twelve months, followed by \$3,521 thereafter**, to avert financial duress. Exceptional circumstances are present here: the spouse (1) is employed and pays income taxes, and (2) has costs incurred in visiting her husband. See s.49.455(8)(c), Wis. Stats. The acceptable basic monthly expenses verified by the community spouse are as follows:

Rent	725.00
Gas/electricity/water	222.00
Telephone/cable	155.00
Federal income tax	147.00
State income tax	129.00
SocSec/Medicare taxes	184.00
Employer-mandated ret. fund	290.00
Car/renter's insurance	116.00
Car payment	197.00
Gas (car)	540.00
Vehicle maintenance	80.00
Groceries/supplies	400.00
Home upkeep (snowblower,etc.)	100.00
Debt gone to collection (\$1,800 balance)	150.00
Wife's health insurance	97.00
Wife's dental/vision insurance	37.00
Wife's prescription	17.00
Haircuts	25.00
Clothes/toiletries	<u>60.00</u>
 TOTAL	 \$3671.00

In setting the Maximum Allocation at \$3,671, I accepted as accurate the budget numbers provided by the community spouse in her exhibits. The county agency may leave this \$3,671 Maximum Allocation in place for twelve months, and then insert a \$3,521 Allocation indefinitely (or the Maximum Allocation established in the *Handbook* at the time, if higher) unless the petitioner's spouse's circumstances change significantly. The higher twelve-month amount is to allow the petitioner to pay off her existing consumer debt, 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.*, major vehicle repair) were not frivolous.

Some of the expenses identified by the community spouse were not included in setting the Maximum Allocation. The excluded monthly expenses were upgraded cable (\$9 add-on for Sports Pass), the second (cell) phone, new furniture, and future pet expenses. Although I believe that the spouse does spend these amounts, I do not conclude that they are basic living expenses. Thus, they were not included. Finally, the petitioner listed the institutionalized spouse's clothing as an expense. Because that expense is already credited in the computation as the \$45 deduction from the institutionalized spouse's income, it cannot be counted again as a community spouse expense. See Finding #4.

The petitioner asked that the revised patient liability amount be effective beginning with June 2013. This is not possible, due to the petitioner's tardiness in filing this hearing request. The time limit for

contesting an agency MA action is 45 days. Wis. Stat. § 49.45(5). The petitioner was notified of the patient liability determination, going back to June 2013, *on October 1, 2013*. The appeal “clock” on an initial application does not start running until the first notice is issued, because the client has no way of knowing that an appeal will be needed until the first notice is issued. If he had filed a hearing request within 45 days of October 1 (November 18), I could have changed the liability amount going back to June 2013. *See*, Exhibit 1, October 2, 2013 notice, p.6, for appeal deadline date. However, in this case the client inexplicably waited until February 10, 2014 to appeal. Counting backwards from the February 10 filing, the 45-day appeal frame takes me back to the end of December 2013. I am therefore able to alter the patient liability amount beginning with the 1/1/2014 effective date, and will do so here.

CONCLUSIONS OF LAW

1. Due to exceptional circumstances, the petitioner’s spouse requires \$3,671.00 to live on for twelve months of the petitioner’s patient liability.
2. Due to exceptional circumstances, the petitioner’s spouse requires \$3,521 to live on after the period in Conclusion #1 expires.

THEREFORE, it is

ORDERED

That the petition for review herein be *remanded* to the county agency with instructions to increase the petitioner’s Maximum Community Spouse Income Allocation to **\$3,521.00**, effective with the January, 2014, cost of care liability determination. The Maximum Allocation will be adjusted to **\$3,521.00** effective with the January, 2015, cost of care liability determination. 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

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 28th day of April, 2014

\sNancy J. Gagnon
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 April 28, 2014.

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