



FH
[REDACTED]

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

In the Matter of

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

DECISION

MRA/155592

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Grant County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on May 05, 2014, at Lancaster, Wisconsin. At the request of the parties, the record was held open for two weeks for the petitioner to submit an itemization of her monthly expenses to DHA and the county agency, and then for the county review that submission and send its response to DHA and to petitioner. The parties timely submitted their submission to DHA which are received into the hearing record.

The issue for determination is whether the community spouse's income allocation may be increased and the petitioner's patient liability reduced retroactive to March 1, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Representative:

[REDACTED] [REDACTED], wife
[REDACTED]
[REDACTED]

Respondent:

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

By: Katie Grinnell, ESS
Grant County Department of Social Services
Hwys 35 and 61 South
PO Box 447
Lancaster, WI 53813

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Grant County who resides in a nursing home. His wife, [REDACTED], resides in the community in a private residence.
2. The petitioner receives Medical Assistance (MA) benefits.
3. In petitioner's prior spousal impoverishment decision (MRA-13/97668 issued October 21, 2008), ALJ Nancy Gagnon concluded that due to exceptional circumstances (substantial credit card debt and bank loans) the petitioner's wife required an increase to \$4,622 to her Maximum Community Spouse Income Allocation from July 1, 2008 through June, 2013. However, that order was specifically in effect only through June, 2013.
4. The petitioner's MA case was transferred from the Dane County to Grant County agency so the Grant county ESS worker was not aware until about January/February, 2014 of Judge Gagnon's Order ending as of July 1, 2013.
5. The county agency sent a February 24, 2014 notice to the petitioner approving continued MA for the petitioner, but increasing his monthly cost of care to be \$1,853.99 as of April 1, 2014. The petitioner's patient liability increased because many of the large debts (credit card debts and bank loans) petitioner owed during the period of 2008 through June, 2013 were no longer debts as of the February, 2014 community spousal expense re-assessment by the county agency. The county agency determined the petitioner's income allocation to his community spouse to be \$686.78.
6. The petitioner receives total unearned income of \$2,585.75 which includes monthly Social Security of \$1,533 and monthly pension of \$1,052.75).
7. Petitioner's wife, [REDACTED], receives monthly gross income of \$2,244.24 from her employer, [REDACTED].
8. Petitioner's representative filed this appeal requesting a continuation of petitioner's community spouse's income allocation from the previous hearing order in MRA-13/97668 which ended July 1, 2013 alleging continued monthly expenses above the petitioner's wife's Minimum Monthly Maintenance Needs Allowance (MMMNA) to meet her basic and necessary monthly expenses and a reduction in petitioner's cost of care liability.
9. While the record was held open, petitioner's wife and representative submitted itemized evidence of her monthly expenses as of about March, 2014.
10. The petitioner's wife incorrectly alleged that her basic and necessary monthly expenses totaled \$4,625.79, when her actual monthly expenses were about \$2,771.80 (without erroneously including her husband's patient liability of \$1,853.99 which was her husband's expense, not the wife's monthly expense).
11. The county agency correctly determined that petitioner's MMMNA was \$2,931 as of April 1, 2014 which included excess shelter expense from utilities, mortgage payment, homeowner's insurance, and property taxes.

DISCUSSION

The federal Medicare Catastrophic Coverage Act of 1988 included extensive changes in State Medicaid eligibility determinations as they relate to spousal impoverishment where one spouse is a resident in a nursing home. The purpose of the new act was to protect a "community" spouse's assets and resources and

designate how a spousal share would be computed. The Act also established a new minimum needs allowance for the community spouse at a specified percentage of the federal poverty line. Sec. 49.455, Wis. Stats., 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 Department to establish an income allowance for the community spouse of an institutionalized person. Consequently the Wisconsin Legislature enacted sec. 49.455, Wis. Stats. in order to bring the Wisconsin Medicaid program into conformity with federal law. Section 49.455 specifically states that the department is to use the criteria of that statutory section in determining the eligibility for medical assistance under §49.46 or 49.47, Wis. Stats. and the required contribution toward the care of an institutionalized spouse.

"Community spouse" refers to the person who is married to an institutionalized individual. See sec. 49.455(1), Wis. Stats. As a general rule, no income of a spouse is considered to be available for use by the other spouse during any month in which that other spouse is an institutionalized spouse. See sec. 49.455(3), Wis. Stats. However, after an institutionalized person is found eligible for medical assistance (MA), he or she may allocate income to the community spouse.

The Minimum Monthly Maintenance Needs Allowance (MMMNA) is the established amount the MA program allows a community spouse based upon what has been determined necessary to allow that spouse to continue residing in the community. The MMMNA was \$2,841.00 as of January 1, 2012. Wis. Stat. §49.455(4)(b), *Medicaid Eligibility Handbook*, 18.6.2. The MMMNA is a general number considered to be the amount of monthly income the spouse of an institutionalized individual requires to continue residing in the community and meeting his or her *basic* maintenance needs. In the instant case, the applicable MMMNA has been increased to \$2,898 as of May 1, 2014.

The Community Spouse Income Allocation (CSIA) is the amount which a particular community spouse is determined to need to continue residing in the community and may actually exceed the MMMNA. The CSIA is defined as the greater of the MMMNA or an amount determined by a fair hearing. Wis. Stat. §49.455(4)(b).

Administrative Law Judges (ALJs) have the authority to increase the CSIA above the MMMNA where the MMMNA is insufficient to meet a particular community spouse's *basic* maintenance needs. Wis. Stat. §49.455(8)(c); Wis. Admin. Code §DHS 103.075(8)(c); *Medicaid Eligibility Handbook* 18.6. However, an increase in the CSIA above the MMMNA can be made through the fair hearing process only if it is established that the community spouse requires income above the level provided by the MMMNA due to the existence of "exceptional circumstances resulting in financial duress" for the community spouse. Wis. Stat. §49.455(8)(c); Wis. Admin. Code §DHS 103.075(8)(c). 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).

(emphasis added)

Sec. 49.455(8)(c), Wis. Stats. 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.

However, during the hearing and while the record was held open, the petitioner's representative did not establish exceptional circumstances that she had monthly basic and necessary expenses which were above the MMNA of \$2,931 (including excess shelter expenses).

In the county's closing argument, ESS Katie Grinnell correctly objected to the petitioner's alleged monthly expenses of \$4,625.99 and stated accurately that petitioner was incorrectly including her husband's patient liability of \$1,853.99 as her monthly expenses. That patient liability is owed by and paid from the petitioner's \$2,585.75 gross income, not from the petitioner's income, and thus can not be included as part of her monthly expenses. After subtracting the patient liability of \$1,853.99, the community spouse's monthly expenses are about \$2,771.80, as explained by Ms. Grinnell in her written closing argument.

It is important to emphasize that even if income allocation is possible, not all expenses qualify. In order for an administrative law judge to use expenses, they must meet "**necessary and basic maintenance needs**" MA Handbook, Appendix 23.6.0. "Income Allocation". This corresponds to the statutory language that the new income amount is in lieu of the "minimum monthly maintenance needs". Sec. 49.455(8)(c), Stats., (emphasis added.) Because the community spouse is essentially asking state taxpayers to give the nursing home or group home resident more welfare in the form of MA, I do not think that every expense is automatically appropriate for inclusion, even if it is not frivolous.

Petitioner's wife's has not established basic and necessary expenses above the MMMNA of \$2,931 (with excess shelter expense), and therefore her monthly income allocation remains at \$686.78 (Mrs. [REDACTED]'s earned income of \$2,244.24 plus the \$686.78 income allocation from her husband equals the MMMNA of \$2,931. Accordingly, based upon the above analysis, the petitioner's request to increase the community spouse's income allocation as of March 1, 2014 is denied; and petitioner's request for a reduction in his cost of care contribution is also denied.

CONCLUSIONS OF LAW

1. The petitioner's wife was not able to establish exceptional circumstances resulting in financial duress which justified an increase in her minimum monthly maintenance pursuant to sec. 49.455(8)(c), Wis. Stats.
2. The basic and necessary monthly expenses of petitioner's wife (community spouse) as of March 1, 2014 in the amount of \$2,771.80 do not warrant an increase in her income allotment and a reduction in petitioner's cost of care contribution.

THEREFORE, it is

ORDERED

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.

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 9th day of June, 2014

\sGary M. Wolkstein
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 9, 2014.

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