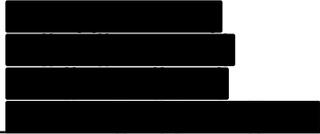




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MRA/156587

PRELIMINARY RECITALS

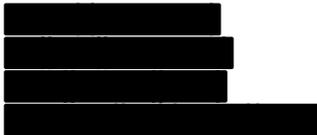
Pursuant to a petition filed April 02, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Ozaukee County Department of Social Services in regard to Medical Assistance (MA), a telephonic hearing was held on May 08, 2014.

The issue for determination is whether petitioner's community spouse income allocation can be increased.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Pahoua Vang

Ozaukee County Department of Social Services
121 W. Main Street
PO Box 994
Port Washington, WI 53074-0994

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Ozaukee County. He has been found eligible for MA (Nursing Home-Long Term Care) and his spouse remains in the community. In February 2014 he completed his MA renewal.

2. On February 24, 2014 the agency issued a notice to petitioner stating that effective March 1, 2014 he would have a patient liability in the amount of \$594.41.
3. Petitioner's gross monthly income consists of \$368.54 from [REDACTED] [REDACTED] [REDACTED] (\$4422.48/12), \$1296.75 from [REDACTED] [REDACTED] (\$15,554.04/12) and \$1742 in Social Security, for a total of \$3407.29. Petitioner's community spouse's gross monthly income includes \$123 in Social Security, \$622 in Social Security, and \$208.12 in pension, for a total of \$953.12.
4. Petitioner's community spouse's allowable monthly expenses total \$4137.53 per month.

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, 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, which is the lesser of \$2898 or \$2585 plus excess shelter allowance. See *MA Eligibility Handbook (MEH)*, §18.6.2, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. In this case, however, the agency allocated \$2676.88 in accordance with the previous DHA Final Decision No. MRA/139500. I note that this matter was confusing to the petitioner given the issuance of a variety of notices as well as agency administrative errors, such as using the net earnings on pension and including the community spouse's Medicare premium as an expense for the petitioner in the calculations.

The community spouse maintains that she cannot get by on her income, which is \$2676.88 after the allocation. The county agency does not have discretion to allocate income to her that would cause her "income plus allocation" total to exceed the amount now allocated. However, I have some limited discretion and have determined that her 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 \$4137.53 to avert financial duress. The acceptable monthly expenses identified by the community spouse are as follows:

Mortgage	969.63
Health Insurance (including Part D)	162.87
Telephone	50
Gas for vehicle	300
Car Maintenance	16.25
Home & Car Insurance	147.69
Personal care (hair, clothing, etc.)	60
Groceries	380
We Energies	149.64
Electric	61.91
Snow removal	36.25 (5 months @ 87 per month/12months)
Property Tax	489
Life Insurance	14.29
Home equity loan	400 (check balance)
Visa	500 (check balance)
Groceries	400
<hr/>	
TOTAL	\$4137.53

In setting the Maximum Allocation at \$4137.53, I accepted as accurate the budget numbers provided by the community spouse at hearing.

A few expenses cannot be considered a basic living expense, and therefore were not included in the list of allowable expenses above. To determine whether an expense is basic, an ALJ looks at whether an expense is either mandatory (*e.g.*, income tax) or essential for survival (*e.g.*, food). Thus, the cable TV, charitable contributions and expenses associated with gifts were disallowed. I also cannot include the petitioner's nursing home patient liability charges as these are considered the institutional spouse's own expenses. The credit card expense for [REDACTED] was not included as an expense as petitioner's spouse testified that was paid off.

Based on the foregoing, I will order that the community spouse income allowance be raised to \$4137.53 per month. The agency shall then change petitioner's monthly patient liability based upon the new allowance. The agency is also reminded to review these costs in an annual review to determine which if any debts (*e.g.*, home equity loan and Visa) have been paid off or reduced.

Finally, I note for the parties that the case name was renamed from MGE to MRA post-hearing to accurately reflect the case type for DHA's administrative purposes.

CONCLUSIONS OF LAW

Due to exceptional circumstances, the petitioner's wife requires a \$4137.53 Maximum Community Spouse Income Allocation retroactive to March 1, 2014.

THEREFORE, it is

ORDERED

That the petition for review herein be remanded to the agency with instructions to increase petitioner's community spouse's Maximum Community Spouse Income Allocation to \$4137.53 effective with the March 1, 2014 cost of care liability determination, to change the monthly patient liability accordingly, and to issue a notice of decision regarding same. 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

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 9th day of June, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on June 9, 2014.

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