



FH
[REDACTED]

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

In the Matter of

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

DECISION

MRA/156900

PRELIMINARY RECITALS

Pursuant to a petition filed April 15, 2014, under Wis. Stat., §49.455(8), to review a decision by the Green County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on May 22, 2014, by telephone. Note that following the hearing I changed the three-letter code in the caption from "MGE" to "MRA" to reflect the issue raised in the appeal. The coding is primarily for office usage; it does not affect the decision.

The issue for determination is whether petitioner's wife needs an increase in her community spouse income allowance to avoid financial duress.

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Mark Nelson
Green County Dept. of Human Services
N3152 State Road 81
Monroe, WI 53566

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Green County. He currently resides in a nursing home, and his wife remains in the family home.

2. An application for nursing home MA was filed on petitioner's behalf on March 21, 2014. Petitioner was found to be eligible for MA with a monthly patient liability of \$583.40 beginning May 1, 2014.
3. Petitioner's monthly income is \$1,544 social security. His wife receives \$698 monthly social security. In addition, she works part time with the school district. Her monthly earned income at the time of the application was \$1,013.40.
4. The county agency established a community spouse income allowance of \$2,585 per month. Thus \$873.60 of petitioner's income was allocated to his wife, with the remainder going to the monthly cost of care, his \$45 personal needs allowance, and a health insurance premium.
5. Petitioner's wife seeks to have her income allowance increased. She pays a monthly \$645 mortgage and utilities. However, her listed monthly expenses are less than the calculated allowance.

DISCUSSION

Wis. Stat., §49.455 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. That allowance set by the county, based upon petitioner's housing costs, is \$2,585. See MA Handbook, Appendix 18.6.2. The institutionalized person may divert some of his income to his community spouse rather than contributing to his cost of care. The amount of the diverted income, when combined with the spouse's income, cannot exceed the maximum allocation determined by the county. Any income of the institutionalized spouse that is not allocated to the community spouse or the personal needs allowance must be paid to the nursing home as the person's cost of care share.

An administrative law judge (ALJ) can grant an exception to this limit on income diversion. The ALJ may increase the income allowance following a fair hearing. The ALJ does not have unfettered discretion in creating an exception to the maximum allocation ceiling, however. 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).

Wis. Stat., §49.455(8)(c), emphasis added. 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.

As a first point, the community spouse income allocation (CSIA) was calculated incorrectly. The county determined it to be \$2,585. It should have been \$2,898. The CSIA is the lesser of \$2,898 or \$2,585 *plus* an excess shelter allowance. Handbook, App. 18.6.2. The excess shelter allowance is the cost of shelter above \$775.50. The cost of shelter includes mortgage, taxes, homeowners insurance, and the Food Share utility standard, which for petitioner's wife would be \$450. Just the mortgage and the utility standard total \$1,095, which is \$319.50 above \$775.50. \$2,585 *plus* \$319.50 is \$2,904.50. Thus petitioner's wife is entitled to a monthly CSIA of \$2,898, which is the lesser of the two amounts. I note to petitioner and her representatives

that I already have communicated this finding to Mr. Nelson, and he agrees with it. Apparently the computer system is not programmed to increase the amount above \$2,585; it has to be done manually.

For me to increase the CSIA, the standard for raising the income allowance is whether, due to exceptional circumstances that could result in financial duress, petitioner's wife needs additional income on top of the \$2,898 already allowed to her. Thus my job is not just to look at her expenses, but expenses that might cause financial duress due to exceptional circumstances.

I have reviewed petitioner's list of expenses. The yearly expenses listed by petitioner's wife, divided by twelve, equal \$1,990.12. Even if I were to add in the costs of gas, groceries, clothes, and other essentials, I doubt that the total would be as high as \$2,898. In addition, several potential expenses are listed, but I cannot add potential expenses. If, for example, the roof shingles absolutely have to be replaced in the future, the estimate could be obtained and a new request for an increase in the CSIA could be made. Also, as noted, the county will decrease petitioner's wife's income in the summer. It cannot take an average of her school income because she is not employed on a contractual basis. See Handbook, App. 15.5.2. Finally, there should be plenty of money left over with the increased CSIA for months when school income is a little lower due to vacation breaks other than the summer one.

CONCLUSIONS OF LAW

1. The county incorrectly determined petitioner's CSIA.
2. There is no basis to increase the CSIA above the corrected amounts because petitioner's monthly expenses do not add up to \$2,898.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to increase petitioner's wife's monthly community spouse income allocation to \$2,898 effective May 1, 2014, and to change petitioner's monthly patient liability accordingly. The county shall do so within 10 days of this decision if it has not already done so. In all other respects the petition for review 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 27th day of May, 2014

\sBrian C. Schneider
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 27, 2014.

Green County Department of Human Services
Division of Health Care Access and Accountability