



FH
[REDACTED]

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

In the Matter of

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

DECISION

MRA/159000

PRELIMINARY RECITALS

Pursuant to a petition filed July 10, 2014, under Wis. Stat. § 49.455(8), to review a decision by the Marathon County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on October 14, 2014, by telephone. The hearing was a rehearing granted by the Division of Hearings and Appeals on September 22, 2014. The record was held open one week for submission of additional information.

The issue for determination is whether petitioner’s community spouse requires additional monthly income to avoid financial duress.

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Sherry Seubert
Marathon County Dept. of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner resides with his wife but is a recipient of the IRIS Program, thus classifying him as institutionalized for financial eligibility purposes.

3. Beginning June 1, 2014 petitioner was assessed a monthly cost share for his IRIS participation after his wife began to be paid by the IRIS program to care for him. On July 10, 2014, petitioner's wife requested an increase in her monthly community spouse income allowance (CSIA).
4. Petitioner's monthly income is \$1,776. His wife's monthly income is \$2,598.37 from social security, a pension, and the IRIS program. The CSIA was set at \$2,621.67.
5. Beside regular monthly expenses the couple has substantial credit card debt, with monthly payments alone on that debt totaling approximately \$1,250 per month. They also owe back taxes with monthly payments of \$120 per month, and have a home equity loan with a monthly payment of \$590. Total necessary monthly expenses including the consumer debt are \$4,301.

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. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat., §49.455(1).

The allowance set by the county in this case, based upon petitioner's housing costs, is \$2,621.67. 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 other specified allowances 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.

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 \$2,621.67 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.

An issue in an IRIS case is exactly what the necessary expenses are for the community spouse. In the calculation of petitioner's cost share, he gets deductions for shelter above \$350. Therefore the monthly

average of property taxes, insurance, and utilities can be considered petitioner's expenses except for the first \$350, and thus not his wife's expenses. Petitioner also gets a \$901 personal allowance because he resides in his home. Again, that is money that can be used for household expenses.

There might be a political argument about the taxpayers funding a household's large consumer debt, but the legislature did not put exceptions into the MCCA for such debt, and there is nothing in the law requiring a person to file bankruptcy to expunge such debt. Clearly petitioner's wife would undertake financial duress if she didn't pay her monthly bills, and that is the standard that I am reviewing. I do note that I reduced the total of her monthly bills some because there are some amounts that cannot be considered necessary, such as manicures and church donations, but the necessary charges are still high.

With my finding that necessary monthly expenses are \$4,301, and taking into consideration that petitioner gets a \$901 monthly allowance, I conclude that his wife's CSIA should be increased to \$3,400. I will order that change retroactive to June 1, 2014.

CONCLUSIONS OF LAW

Petitioner's wife needs a CSIA of \$3,400 to avoid financial duress.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to increase the monthly income allocation of petitioner's wife to \$3,400, retroactive to June 1, 2014, and to change the monthly patient liability accordingly. The county shall take the action within 10 days of this decision.

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 24th day of October, 2014

\sBrian C. Schneider
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 October 24, 2014.

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