



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

MGE/159158

PRELIMINARY RECITALS

Pursuant to a petition filed July 16, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sauk County Department of Human Services in regard to Medical Assistance, a hearing was held on September 08, 2014, at Baraboo, Wisconsin.

The issue for determination is whether the agency correctly calculated the CSIA.

There appeared at that time and place the following persons:

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: Julie Arendsee

Sauk County Department of Human Services
505 Broadway, 4th Floor
PO Box 29
Baraboo, WI 53913

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Sauk County.
2. Petitioner was institutionalized from January 30 2013 to June 30, 2014. He moved to a hospital after that date.

3. Petitioner died on July 3, 2014.
4. Petitioner had a gross income of \$1,787.57.
5. The community spouse's income was \$1,293.13.
6. The shelter expenses for the community spouse were \$1,312.
7. The agency calculated a cost of care.
8. Petitioner filed a request for hearing on July 21, 2014.

### 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.

The only issue raised by the petitioner is the claim that 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. In this case these are \$1,312, which is \$536.50 above \$775.50. \$2,585 *plus* \$536.50 is \$3,121.50. Thus petitioner's wife was entitled to a monthly CSIA of \$2,898, which is the lesser of the two amounts. This amount may have been increased beyond this by an ALJ after hearing with a showing that an increase was necessary to avoid duress to the community spouse. At this point, and on this record, I have no satisfaction that the community spouse was actually under duress or was facing the possibility of duress. But, what is clear is that the agency should have allowed a CSIA of \$2,898.

The problem here is one of timeliness. The cost of care was likely determined at the time of institutionalization. Petitioner would have received a notice from the agency informing him of his cost of care and the calculation used to reach this. It is not clear why petitioner filed a request for hearing on July

21, 2014 – more than 17 months after institutionalization. An administrative law judge (ALJ) or hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning Medical Assistance (MA) must be filed within 45 days of the date of the action. Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0. A negative action can be the denial of an application, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or an overpayment notice. I regret that I did not notice the issue of timeliness at the time of hearing. But, timeliness is a jurisdictional and determinative issue and not one I have discretion to ignore.

This appeal is untimely except for the month of June 2014. It is not clear to me that this CSIA was calculated incorrectly. But, I will remand this matter to ensure that the \$2,898 figure is used for the June 2014 calculation.

### CONCLUSIONS OF LAW

1. The correct CSIA for the month of June 2014 was \$2,898.
2. With regard to prior months of institutionalization, this request for a retroactive change to the CSIA is untimely.

**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 June 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 25th day of September, 2014

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\sJohn P. Tedesco  
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 September 25, 2014.

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