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[REDACTED]

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

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In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/159405

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 29, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Jefferson County Department of Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on September 16, 2014.

The issue for determination is petitioner has established that his wife needs income above the level provided by the Minimum Monthly Maintenance Needs Allowance ["MMMNA"] in order to avoid a situation that would result in her not being able to provide for her own necessary and basic maintenance needs.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

BY: Mary Springer, ESS  
Jefferson County Department of Human Services  
Workforce Development Center  
874 Collins Rd.  
Jefferson, WI 53549

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]; 70 years old) is a resident of Jefferson County, Wisconsin.
2. Petitioner is enrolled in the MA Family Care Program ["FCP"] and resides with his wife in their home in the community.
3. Petitioner's wife's MMMNA (without a Fair Hearing or Circuit Court Order) is at least \$2,585.00.
4. Petitioner claims monthly expenses for his wife of approximately \$3,100; those claimed monthly expenses induce the following:
  - (a) \$600.00; rent;
  - (b) \$100.60; life insurance premiums;
  - (c) \$800.00; groceries; and,
  - (d) \$68.48; life insurance at work.

**DISCUSSION**

A person who is eligible for FCP must pay a monthly amount toward their cost of care. This is known as the FCP *cost share*. See, Wis. Stat. § 46.286(2)(a) (2011-12); Wis. Admin. Code § DHS 10.34(2) (November 2013); *Medicaid Eligibility Handbook* ["MEH"] 29.3.1. A person who is required to pay an FCP cost share but fails to make the required payments is ineligible for FCP. Wis. Stat. § 46.286(2)(c) (2011-12); Wis. Admin. Code § DHS 10.34(4)(a) (November 2013)<sup>1</sup>.

Most of an FCP recipient's income, with certain limited exceptions, must be used to pay for the FCP recipient's needs. FCP pays any costs which exceed the recipient's income.

Some FCP recipients are married and have spouses. In these cases, the law recognizes that requiring most of the FCP recipient's income to be used to pay for their needs may leave the spouse in poverty. In order to prevent the impoverishment of the spouse, the law allows the spouse to receive the lesser of the following as monthly income: \$2,898.00; **or**, \$2,585.00 plus excess shelter allowance. This is known as the *Minimum Monthly Maintenance Needs Allowance* ["MMMNA"]. Wis. Stat. §§ 46.286(6), 49.455(4)(a)2. & (c) (2011-12); Wis. Admin. Code §§ DHS 10.35 (December 2013) & DHS 103.075(6)(b)1. & (c)2. (December 2008); *Medicaid Eligibility Handbook* ["MEH"] 18.6.2.Section A1. In this case, petitioner's wife's current MMMNA was at least \$2,585.00.

The MMMNA can be increased if either petitioner or his/her spouse establishes at a Fair Hearing that, due to exceptional circumstances resulting in financial duress, the spouse needs income above the level provided by the MMMNA. Wis. Stat. § 49.455(8)(c) (2011-12); Wis. Admin. Code § DHS 103.075(8)(c) (December 2008); MEH 18.6.2.Section A1. The phrase *exceptional circumstances resulting in financial*

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<sup>1</sup> If the Wisconsin Department of Health and Services ["DHS"] determines that the person or his or her family would incur an undue financial hardship as a result of making the FCP cost share payment DHS may waive or reduce the amount. Wis. Admin. Code § DHS 10.34(4)(b) (November 2013). There is no evidence in the record of this matter that DHS has granted such a waiver or reduction in this case. Petitioner may wish to contact DHS and apply for such a waiver. He may do so by writing a letter to: **Bureau Director; Office of Family Care; Wisconsin Department of Health Services; P.O. Box 7850; Madison, Wisconsin 53707-7850.**

*duress* means situations that result in the spouse not being able to provide for his or her own necessary and basic maintenance needs. Wis. Admin. Code § DHS 103.075(8)(c) (December 2008); MEH 18.6.2.Section A1. Thus, the burden is on the person seeking an increase in the MMMNA. It must be established that the spouse needs income above the level provided by the MMMNA in order to avoid a situation that would result in the spouse not being able to provide for his or her own necessary and basic maintenance needs.

Petitioner claims monthly expenses for his wife of approximately \$3,100. However, not all of the claimed expenses are allowable.

First, claimed necessary and basic maintenance expenses must be solely for petitioner's wife and not for any other person.<sup>2</sup> The expenses of \$600.00 for rent and \$800.00 for groceries are for both petitioner and his wife. Thus, only a portion of those expenses are allowable. In the case of rent only \$350.00 per month is allowable because anything above \$350.00 per month is deducted from petitioner's income when calculating the FCP cost share amount. See, *Medicaid Waiver Eligibility And Cost Sharing Worksheet* [F-20919 (02/2104)] found at Appendix C-1 of the *Medicaid Home & Community-Based Waivers Manual*. In the case of groceries only \$400.00 per month is allowable since ½ of the groceries are assumed to be for petitioner (and not for his wife). Many of petitioner's other claimed expenses also appear to be at least partly for petitioner, and not for his wife (such as haircuts; wipes; sanitizer; drug store OTC; bandages; gas; etc.). Such claimed expenses are not allowable to the extent they are for petitioner, and not for his wife.

Second, claimed expense must be for necessary and basic maintenance needs. Petitioner's claimed expenses of \$100.60 for life insurance premiums and \$68.48 for life insurance at work are not for necessary and basic maintenance need and, therefore, cannot be allowed.

The total of the above nonallowable expenses is \$819.08 (\$250.00 + \$400.00 + \$100.60 + \$68.48). The claimed monthly expenses of petitioner's wife, after deducting the nonallowable expenses, do not exceed petitioner's wife's current MMMNA of at least \$2,585.00 (i.e. \$3,100 - \$819.08 = \$2,280.92). Thus, petitioner has failed to establish that his wife needs income above the level provided by the MMMNA.

As explained above, the burden is on the person seeking an increase in the MMMNA. That person must establish that their spouse needs income above the level provided by the MMMNA in order to avoid a situation that would result in their spouse not being able to provide for his or her own necessary and basic maintenance needs. Petitioner has failed to do so.

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<sup>2</sup> It is noted, however, that when calculating the FCP cost share amount that must be paid by petitioner the amount of petitioner's medical and remedial care expenses (including health insurance premiums) is allowed to be deducted from petitioner's income. *Medicaid Waiver Eligibility And Cost Sharing Worksheet* [F-20919 (02/2104)] found at Appendix C-1 of the *Medicaid Home & Community-Based Waivers Manual*; See also, Wis. Stat. § 49.455(4)(a)4. (2011-12); Wis. Admin. Code §§ DHS 10.34(2) (December 2013) & DHS 103.075(6)(c)4.b (December 2008); MEH 18.6.4.Section C.6.

**CONCLUSIONS OF LAW**

Petitioner has not established that his wife needs income above the level provided by the MMMNA in order to avoid a situation that would result in her not being able to provide for her own necessary and basic maintenance needs.

**NOW, THEREFORE, it is**

**ORDERED**

That 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 29th day of September, 2014

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\sSean P. Maloney  
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 29, 2014.

Jefferson County Department of Human Services  
Office of Family Care Expansion