



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

In the Matter of

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

DECISION

MRA/159881

PRELIMINARY RECITALS

Pursuant to a petition filed August 12, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Manitowoc County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on September 30, 2014, at Manitowoc, Wisconsin.

The issue for determination is whether all or a portion of the petitioner’s income should be “allocated” (disregarded) under spousal impoverishment provisions.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Deb Williquette, ES Supr.
Manitowoc County Department of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County.
2. The petitioner has lived in a nursing home since June 2014. He filed an application for Institutional /Long Term Care MA on July 15, 2014, seeking a backdating to June 20, 2014. On

July 24, 2014, the county agency issued written notice to the petitioner advising that he was approved, but would have to contribute \$1,301.09 toward his nursing home care expense (the balance is paid for by MA) for July 2014. Some medical bills were then submitted, and on August 12, the agency issued written notice advising that the patient liability contribution was \$761.09 for August, and \$261.09 for September. That notice also advises the petitioner that his \$115.40 health insurance premium cost would be subtracted from his income in this nursing home liability computation. Shortly before hearing, the agency received additional owed medical bills, and revised its position to declare that the petitioner will have no patient liability amount for October 2014 through April 2015.

3. The petitioner has a spouse, S. [REDACTED], residing in the community. She has an average gross monthly income of \$2,821.50, all of it earned income. The Maximum Community Spouse Income Allocation is \$2,911.41. Because the spouse's gross income was under the \$2,911.41 maximum allocation amount by \$89.91, the Department automatically determined that \$89.91 of the institutionalized spouse's income would be allocated to her.
4. The petitioner has gross monthly income of \$1,551.40. After subtraction of the \$45 statutory personal allowance, the \$115.40 health insurance premium, and the \$89.91 Community Spouse Income Allocation, the Department determined that the petitioner had \$1,301.09 (for July and from October 1 onward) available to contribute toward the cost of his nursing home care.
5. Ms. [REDACTED] has identified living expenses at hearing that total \$3,270.
6. Of the monthly expenses referred to in Finding #5, **\$3,165** are reasonable, basic and necessary living expenses. The petitioner has atypical expenses for the spouse of a nursing home resident in that (1) she is employed, and therefore pays income taxes, and (2) her commuting distances for work and visiting her husband (the facility is over 50 miles from her residence) are substantial.

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, s/he may allocate some of her income to the community spouse if the community spouse's gross monthly income does not exceed the Maximum Community Spouse Income Allocation of \$2,911.41. See *MA Eligibility Handbook (MEH)*, 18.6.2, online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. In this case, the gross income of the community spouse is \$2,821.50. The Department allocated \$89.91 from the institutionalized spouse's net income to her as the community spouse.

The community spouse argues that she cannot get by without a larger allocation. The county agency does not have discretion to allocate income to her that would cause her "income plus allocation" total to exceed \$2,911.41. However, I have some limited discretion and have determined that Ms. [REDACTED]'s 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 **\$3,165.00**, to avert financial duress. Exceptional circumstances are present here: (1) the spouse is employed, and therefore pays income taxes, and (2) her commuting distances for work and visiting her husband (the facility is over 50 miles from her residence) are

substantial. See s.49.455(8)(c), Wis. Stats. The acceptable monthly expenses verified by the community spouse are as follows:

Mortgage/tax/HO insurance	627.00
Gas/electricity/water	370.00
Telephone	105.00
Federal income tax	332.00
State income tax	145.00
SocSec/Medicare taxes	214.00
Car payment	240.00
Car insurance	60.00
Gas (car)	420.00
Vehicle maintenance	50.00
Internet service	52.00
Groceries	250.00
Home maintenance	50.00
Wife's health insurance	184.00
Wife's dental insurance	6.00
Haircuts	0.00
Clothes/toiletries	<u>60.00</u>
 TOTAL	 \$3165.00

In setting the Maximum Allocation at \$3,165, I accepted as accurate the budget numbers provided by the community spouse. The county agency may insert this \$3,165 Maximum Allocation for July 2014, and skip over the months of August 2014 through April 2015, where the petitioner already has a lower or no patient liability amount established. The agency should then again insert the \$3,165 Allocation in the case indefinitely (or the Maximum Allocation established in the *Handbook* at the time, if higher) unless the petitioner's spouse's circumstances change significantly.

The only expense identified by the community spouse that was not included in setting the Maximum Allocation was half of her telephone bill. She indicated that her bill covered both herself and her *adult* son. Although I believe that the spouse does spend \$210 monthly on a cell phone bill for two, the adult son's half is not a basic living expense for the community spouse. Thus, half of that cost not included.

CONCLUSIONS OF LAW

1. Due to exceptional circumstances, the petitioner's spouse requires \$3,165 to live on for July 2014, and for May 2015 onward.
2. The agency stipulated at hearing that the petitioner's patient liability amount would be zero for October 2014 through April 2015.

THEREFORE, it is

ORDERED

That the petition for review herein be *remanded* to the county agency with instructions to increase the petitioner's Maximum Community Spouse Income Allocation to **\$3,165** for the July 2014, cost of care liability determination, and for the determination for May 2015 onward. 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

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 14th day of October, 2014

\sNancy J. Gagnon
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 October 14, 2014.

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