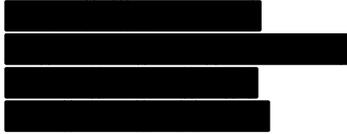




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MRA/159884

PRELIMINARY RECITALS

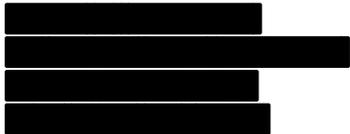
Pursuant to a petition filed August 12, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on October 01, 2014, at Waupaca, Wisconsin. At the request of the parties, the record was held open for additional evidence and closing arguments to be submitted to the Division of Hearings and Appeals (DHA). Both parties timely submitted their statements and/or evidence to DHA.

The issue for determination is whether the community spouse's income allocation may be increased and the petitioner's patient liability reduced retroactive to July 1, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Representative:



Respondent:

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

By: Pamela Kolb, ESS

Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waupaca County who resides in a nursing home. His wife, [REDACTED], resides in the community in a private residence.
2. The petitioner receives Medical Assistance (MA) benefits.
3. The county agency sent a July 31, 2014 notice to the petitioner approving continued MA for the petitioner, but with a \$601.41 monthly cost of care as of July 1, 2014 and a \$621.62 cost share as of August 1, 2014, with a \$986.75 income allocation from petitioner to his community spouse (wife).
4. During August, 2014, petitioner's wife and representative requested increased income allocation from the petitioner to his community spouse as of July 1, 2014.
5. The petitioner receives monthly Social Security of \$1,027 as of July, 2014.
6. The petitioner receives land contract interest payment of \$606.16 during July, 2014 which increased to \$626.36 for August, 2014.
7. Petitioner's wife, [REDACTED], receives monthly average earned income of about \$292.44 from [REDACTED] of [REDACTED], WI.
8. Mrs. [REDACTED] receives monthly average earned income of about \$408.29 for her part-time employment from [REDACTED].
9. Mrs. [REDACTED] at times (depending on her income) received Unemployment Compensation (UC) benefits of about \$72 per week during the period of February 14- August 29, 2014.
10. Mrs. [REDACTED] wife receives Social Security of \$811 per month.
11. The total income of petitioner's wife was \$2,850 as of July, 2014.
12. Petitioner's representative filed this August 12, 2014 appeal requesting an increase in petitioner's community spouse's income allocation as of July 1, 2014 to raise petitioner's wife's Minimum Monthly Maintenance Needs Allowance (MMMNA) from \$2,931 as of July 1, 2014 to meet her basic and necessary monthly expenses, and a reduction in petitioner's cost of care liability.
13. During the October 1, 2014 hearing (and while the record was held open), petitioner's representative submitted evidence that she had substantial expenses which required an increase in her monthly income allocation as of July 1, 2014.
14. The petitioner's wife established that she has basic and necessary monthly expenses totaling \$3,488.00.

DISCUSSION

The federal Medicare Catastrophic Coverage Act of 1988 included extensive changes in State Medicaid eligibility determinations as they relate to spousal impoverishment where one spouse is a resident in a nursing home. The purpose of the new act was to protect a "community" spouse's assets and resources and designate how a spousal share would be computed. The Act also established a new minimum needs allowance for the community spouse at a specified percentage of the federal poverty line. Sec. 49.455, Wis. Stats., is the Wisconsin codification of 42 U.S.C. s.13964-5 (MCCA). Among other thing, the "spousal impoverishment" provisions at sec. 49.455 direct the Department to establish an income allowance for the community spouse of an institutionalized person. Consequently the Wisconsin Legislature enacted sec. 49.455, Wis. Stats. in order to bring the Wisconsin Medicaid program into conformity with federal law. Section 49.455 specifically states that the department is to use the criteria of that statutory section in determining the eligibility for medical assistance under §49.46 or 49.47, Wis. Stats. and the required contribution toward the care of an institutionalized spouse.

"Community spouse" refers to the person who is married to an institutionalized individual. See sec. 49.455(1), Wis. Stats. As a general rule, no income of a spouse is considered to be available for use by the other spouse during any month in which that other spouse is an institutionalized spouse. See sec. 49.455(3), Wis. Stats. However, after an institutionalized person is found eligible for medical assistance (MA), he or she may allocate income to the community spouse.

The Minimum Monthly Maintenance Needs Allowance (MMMNA) is the established amount the MA program allows a community spouse based upon what has been determined necessary to allow that spouse to continue residing in the community. The MMMNA was \$2,841.00 as of January 1, 2012. Wis. Stat. §49.455(4)(b), *Medicaid Eligibility Handbook*, 18.6.2. The MMMNA is a general number considered to be the amount of monthly income the spouse of an institutionalized individual requires to continue residing in the community and meeting his or her *basic* maintenance needs. In the instant case, the applicable MMMNA has been increased to \$2,931 as of July 1, 2014.

The Community Spouse Income Allocation (CSIA) is the amount which a particular community spouse is determined to need to continue residing in the community and may actually exceed the MMMNA. The CSIA is defined as the greater of the MMMNA or an amount determined by a fair hearing. Wis. Stat. §49.455(4)(b).

Administrative Law Judges (ALJs) have the authority to increase the CSIA above the MMMNA where the MMMNA is insufficient to meet a particular community spouse's *basic* maintenance needs. Wis. Stat. §49.455(8)(c); Wis. Admin. Code §DHS 103.075(8)(c); *Medicaid Eligibility Handbook* 18.6. However, an increase in the CSIA above the MMMNA can be made through the fair hearing process only if it is established that the community spouse requires income above the level provided by the MMMNA due to the existence of "exceptional circumstances resulting in financial duress" for the community spouse. Wis. Stat. §49.455(8)(c); Wis. Admin. Code §DHS 103.075(8)(c). 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).

(emphasis added)

Sec. 49.455(8)(c), Wis. Stats. 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**. During the hearing, the petitioner's representative established exceptional circumstances regarding nursing home, medical, credit card debt, household expenses, and other necessary expenses resulting in financial duress, which justified an increase in her minimum monthly maintenance allowance.

It is important to emphasize that even if income allocation is possible, not all expenses qualify. In order for an administrative law judge to use expenses, they must meet "**necessary and basic maintenance needs**" MA Handbook, Appendix 23.6.0. "Income Allocation". This corresponds to the statutory language that the new income amount is in lieu of the "**minimum** monthly maintenance needs". Sec. 49.455(8)(c), Stats.,

(emphasis added.) Because the community spouse is essentially asking state taxpayers to give the nursing home or group home resident more welfare in the form of MA, I do not think that every expense is automatically appropriate for inclusion, even if it is not frivolous.

During the hearing, petitioner's representative established that she has average monthly expenses totaling \$3,488, due to exceptional expenses related to various expenses and debts. During the hearing and in her written statement after the hearing, the county agency representative did not object to any of the petitioner's documented monthly expenses.

Petitioner's wife's has established basic and necessary expenses substantially above the MMMNA of \$2,931, and therefore her monthly income allocation should be increased to raise her monthly income from \$2,931 to the income of \$3,488.00 retroactive to July 1, 2014. Accordingly, based upon the above analysis, the petitioner's request to increase the community spouse's income allocation as of July 1, 2014 is approved; and petitioner's request for a reduction in his cost of care contribution is also approved.

CONCLUSIONS OF LAW

1. The petitioner's wife was able to establish exceptional circumstances resulting in financial duress which justified an increase in her minimum monthly maintenance pursuant to sec. 49.455(8)(c), Wis. Stats.
2. The basic and necessary monthly expenses of petitioner's wife (community spouse) as of July 1, 2014 in the amount of \$3,488.00 do warrant an increase in her income allotment and a reduction in petitioner's cost of care contribution.

THEREFORE, it is

ORDERED

That the matter is remanded to the county agency with the following instructions: a) increase the community spouse's income allotment to increase her monthly income from an MMMNA of \$2,931 to \$3,488.00 retroactive to July 1, 2014; and b) reduce petitioner's cost of care liability retroactive to July 1, 2014, within 10 days of the date 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 November, 2014

\sGary M. Wolkstein
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 November 24, 2014.

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