



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MRA/160899

PRELIMINARY RECITALS

Pursuant to a petition filed September 26, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance, a hearing was held on October 16, 2014, at Oshkosh, Wisconsin.

NOTE: At the hearing, Petitioner's representative indicated that they were contesting the Petitioner's spousal income allocation portion of the patient liability calculation. On October 16, 2014 and October 22, 2014, Petitioner's representative submitted documentation to substantiate her mother's monthly expenses. These have been marked collectively as Exhibit 3.

On November 25, 2014, ALJ Ishii contacted Ms. Vosters to obtain a copy of the notice that advised the Petitioner of his patient liability. Ms. Vosters provided a notice dated September 17, 2014. It has been marked as Exhibit 12 and accepted into the record. If the Petitioner has any objections, his representative is directed to the rehearing instructions on page 7 of this decision.

In addition, the receipt from [redacted] was forwarded to Ms. Vosters via e-mail on November 26, 2014. This receipt was included in the submissions that make up Exhibit 3.

The issues for determination are 1) Whether there is a basis upon which to increase the spousal income allocation and therefore decrease the Petitioner's patient liability for the period of July 23, 2014 and October 31, 2014, and 2) whether the agency correctly ended the Petitioner's Medicaid benefits effective November 1, 2014.

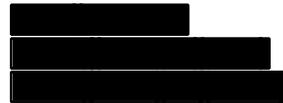
There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Representative / POA :



Respondent:

Department of Health Services
1 West Wilson Street, Room 651

Madison, Wisconsin 53703

By: Leslie Vosters, Fair Hearing Representative and Economic Support Specialist

Winnebago County Department of Human Services  
220 Washington Ave.  
PO Box 2187  
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. On September 17, 2014, the agency sent the Petitioner a notice indicating that his application for Medicaid benefits was approved effective July 23, 2014 and that he had a patient liability of \$1515.48 per month.
3. On September 18, 2014, the agency sent the Petitioner and his wife a Notice of Proof needed, requesting verification of an AllState policy that Petitioner’s wife cashed in. The requested proof was due September 29, 2014. (Exhibit 6)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 26, 2014. (Exhibit 1)
5. On October 3, 2014, the agency sent the Petitioner a notice, indicating that his health care benefits would be ending effective November 1, 2014, because he did not provide the required proof. (Exhibit 8)

**DISCUSSION**

**I. PATIENT LIABILITY**

Medical assistance rules require institutionalized persons to “apply their available income toward the cost of their care.” *Wis. Admin. Code § DHS 103.07(1)(d)*. Cost of care is the amount s/he will pay each month to partially offset the cost of his/her Medicaid services. The cost of care is referred to as a patient liability amount when applied to a resident of a medical institution. *Medicaid Eligibility Manual (MEH), §27.7.1*

The cost of care is calculated by taking the institutionalized person’s gross income and deducting the following amounts, if they apply:

1. Personal Needs Allowance (\$45.00 for everyone)
2. Community Spouse Income Allocation
3. Dependent Family Member Allocation
4. Court Ordered Guardian or Attorney Fees or Special Exempt Income
5. Medical/Remedial Cost and Cost of Person’s Health Insurance Premiums

*MEH §27.7.1 and §18.6.1*

There is no assertion and no evidence that Petitioner has any dependents other than his spouse, nor is there any assertion that Petitioner has court ordered guardian or attorney fees or other special exempt income.

Petitioner's spouse did not contest the agency's determinations that 1) Petitioner's income was \$2,083.58 per month, 2) that his medical/remedial expenses total \$87.00 per month for his health insurance premium and 3) that her income is \$2,270.57 per month. (See Exhibit 9)

The deduction with which Petitioner seemed to be most concerned was the Community Spouse Income Allocation. Petitioner's spouse testified that she is struggling to make ends meet.

#### *Community Spouse Income Allocation*

State and federal medical assistance laws contain provisions that allow an institutionalized person to allocate some of his income to his spouse so that she does not fall into poverty. *See Wis. Stat. § 49.455 and 42 U.S.C. §13964-5; also see MEH §§18.1 and 18.6.1.* This is called a Community Spouse Income Allocation or CSIA. (Id.)

Generally speaking, the Community Spouse Income Allocation is calculated by taking the Minimum Monthly Maintenance Needs Allowance (MMMNA) and subtracting from that amount, the Community Spouse's gross monthly income. *MEH §§18.1 and 18.6.1.*

The MMMNA currently is the **lesser** of \$2,898 or \$2,585 plus excess shelter costs. *MEH § 18.6.2.* Excess shelter costs are shelter costs above \$775.50. Id. Shelter costs include the community spouses expenses for:

1. Rent
2. Mortgage principal and interest
3. Taxes and insurance for a principal place of residence
4. Any required maintenance fee if the community spouse lives in a condo or co-op
5. The standard utility allowance established under the FoodShare program

#### *MEH § 18.6.2.*

According to an itemized list provided by Petitioner's representative Petitioner's spouse does not pay a mortgage, but does pay \$285 per month for property taxes and approximately \$79.00 per month for homeowner's insurance. (See Exhibit 3) The Heating Standard Utility Allowance established under the FoodShare program is \$446 per month and the Water and Sewer Allowance is \$37.00 per month. *FoodShare Wisconsin Handbook §8.1.3* This brings the total shelter expense to \$847.00. Thus, the excess shelter expense works out to be \$71.50 (\$847 – \$775.50).

\$2585 + \$71.50 = \$2656.50, and this is the Petitioner's MMMNA, since it is **the lesser** of \$2,898 or \$2,585.00 plus excess shelter costs. The agency indicated in its budget that the MMMNA it used was \$2,777.17, but gave no explanation for how that was calculated. (See Exhibit 9)

Administrative law judges (ALJs) have the authority to increase the CSIA above the MMMNA when the MMMNA is insufficient to meet a particular community spouse's basic maintenance needs and when there exist "exceptional circumstances resulting in financial duress" for the community spouse. *Wis. Stat. §49.455(8)(c); Wis. Admin. Code §DHS 103.075(8)(c); MEH §18.6.* "Exceptional circumstances resulting in financial duress" means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs". *Wis. Admin. Code §DHS 103.075(8)(c); emphasis added.*

Petitioner's spouse asked that her expenses be examined and that the CSIA be increased above the \$2,777.17 MMMNA that the agency allowed. Petitioner submitted the following list of monthly expenses (See Exhibit 3):

- |                     |       |
|---------------------|-------|
| 1. Home Equity Loan | \$496 |
|---------------------|-------|

It is presumed, based upon the amount of the monthly payment, that the amount of the loan was substantial and therefore, used for either a major repair to the home or to pay a debt that caused the Petitioner's spouse serious financial duress. As such, this will be allowed.

- |                             |         |
|-----------------------------|---------|
| 2. Gas and electric utility | \$202   |
| 3. Water                    | \$64.00 |
| 4. Verizon cellular bill    | \$132   |
| 5. Phone/Internet/Cable     | \$121   |

Cable is not a basic and necessary living expense. In the absence of an itemized bill, the FoodShare allowance \$30.00 per month will be allowed for a phone utility; as such \$45.00, which is half the remaining bill, will be allowed for internet. At this point it is presumed the internet service is used for paying bills on-line and accessing bank statements and other essential information.

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|---------------------------|----------|
| 6. Property Taxes         | \$285    |
| 7. Lawn Care/Snow Removal | \$333.32 |

In the absence of receipts substantiating this cost, \$400 per month sounds excessive. It might be reasonable to allow \$400 for snow removal between November and March, which averages out over 12 months to be \$166.66 per month, assuming \$80.00 per snow fall, five major snow falls per month. (There might be more in January, less in November)

\$250 per month is more reasonable for grass cutting every 7-14 days, assuming \$60 to \$80 per cutting; fertilization in spring and fall and leaf removal, April through November. This also averages out to be \$166.66 over twelve months.

Thus, the total for both snow removal and lawn care works out to be \$333.32 per month.

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|--|-------|
| 8. Groceries                                 | \$160 |
| 9. Car / Home Insurance                      | \$158 |
| 10. Car Maintenance (2001 Ford Windstar Van) | \$100 |
| 11. Gasoline                                 | \$250 |

Reviewing the Petitioner's receipts, her gas expenses did not reach \$250 per month. Looking at the five highest months, Petitioner's spouse averaged about \$142 per month in gas expenses. This is what will be allowed.

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|--|-------|
| 12. Medical Insurance Premium for spouse | \$426 |
|--|-------|

13. Hobbies/Entertainment \$100

Expenses for hobbies and Entertainment cannot be allowed. The Spousal Income allocation is the amount of income necessary to meet the spouse basic and necessary living expenses.

14. Hair Salon \$53.90

15. Outstanding Dental Bill \$50.00

16. Credit Card \$50.00

Expenses for credit card bills will not be allowed, unless there is some evidence that the bill is causing serious financial duress, and even then, it will be allowed only for a limited time.

17. Adult Grandchild Living Expenses \$163

The Spousal Income Allocation is for the needs of the spouse, not an adult grandchild. As such, this expense will not be allowed.<sup>1</sup>

18. Interlock/drug test for Grandchild \$50.00

The Spousal Income Allocation is for the needs of the spouse, not an adult grandchild. As such, this expense will not be allowed.

19. Birthday/Christmas gifts \$25.00

The Spousal Income Allocation is for the needs of the spouse. As such, this expense will not be allowed.

20. Home maintenance \$50.00

21. Church/charities \$40.00

The Spousal Income Allocation is for the needs of the spouse. As such, this expense will not be allowed.

22. Prescription medications \$33.61 (\$268.88 / 8 months per Aug. bill)

23. Outstanding Medical bill totaling \$241.69.  
Divided by 12 months \$20.14

24. Personal / Household Expenses \$100

The Petitioner's spouse did not list this as an expense, but it is reasonable to conclude that she needs to make, "Target/Walmart" runs, to purchase shampoo, soap, toothpaste, laundry

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<sup>1</sup> There is an allowance for "dependent" family members; however a "dependent" family member means, a minor child (natural, adopted, step) of either spouse, children over 18 (natural, adopted or step) of either spouse who are claimed as dependents for tax purposes, siblings of either spouse who are claimed as dependents or parents of either spouse that are claimed as dependents. *MEH §18.6.1* Petitioner's adult grandson, does not appear to fall into any of these categories.

detergent, toilet paper, etc. –This also includes the occasional need replace an article of clothing.

Adding the foregoing allowable monthly expenses, we have \$2880.97 per month. This is more than either the \$2,656.50 MMMNA determined here and it is higher than the \$2777.17, allowed by the agency. As such, it is reasonable to increase the MMMNA to \$2880.97.

Thus, the Community Spouse Income Allocation works out to be:

$$\$2880.97 \text{ MMMNA} - \$2,270.50 \text{ Community Spouse's Income} = \$610.47$$

The Petitioner’s representative indicated that her mother’s expenses will be going up, because she will have to replace her car. If that happens, and the Petitioner is eligible for Medicaid at that time, the Petitioner can again file an appeal to have the Community Spouse Income Allocation re-determined. Petitioner’s representative should be prepared to have documentation to prove all of the claimed monthly expenses.

*The Final Calculation*

Applying to Petitioner’s case, the cost of care/patient liability calculation as described above, we have the following:

Petitioner’s gross countable income:	\$2,083.58
1. Personal Needs Allowance	- \$45.00
2. Community Spouse Income Allocation	- \$610.47
3. Dependent Family Member Allocation	- \$0
4. Court Ordered Guardian or Attorney Fees or Special Exempt Income	- \$0
5. Medical/Remedial Cost and Cost of Person’s Health Insurance Premiums	- \$87.00
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	Patient Liability \$1341.11

II. TERMINATION OF BENEFITS EFFECTIVE NOVEMBER 1, 2014

Verification of information is a part of determining eligibility for Medicaid. “To verify means to establish the accuracy of verbal or written statements” about an applicant’s/member’s circumstances. *MEH §20.1.1*

Verification of assets is mandatory. *MEH §20.3.1 and §20.3.5* The applicant/member is responsible for providing verification of information that is not available through the state’s data exchange. *MEH §20.5* If verification is not provided, benefits may be denied, unless the member is unable to obtain verification of the asset. *MEH §20.8.3; see also MEH §20.5*

Petitioner, in care of his wife, timely received the September 18, 2014 notice requesting verification that an insurance policy had been cashed out. Regrettably, Petitioner’s wife did not provide the requested verification by the September 29, 2014 due date. There is no indication in the record that Petitioner’s wife was unable to access the required documentation. As such, Petitioner’s application for Medicaid benefits was properly denied.

**Petitioner and his representative should note that he can reapply for Medicaid benefits and request a backdate to November 1, 2014.**

**CONCLUSIONS OF LAW**

- 1) The agency did not correctly calculate the Petitioner's patient liability between July 23, 2014 and October 31, 2014.
- 2) The agency correctly ended the Petitioner's Medicaid benefits effective November 1, 2014.

**THEREFORE, it is**

**ORDERED**

That the agency implement a Patient Liability of \$1341.11 per month for July 23, 2014 through October 31, 2014. The agency shall take all necessary steps to complete this task within 15-days of this decision.

In all other respects the appeal is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 26th day of November, 2014.

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\sMayumi M. Ishii  
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 26, 2014.

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