



FH

Redact

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

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In the Matter of

[Redacted]  
[Redacted]  
*Redact*  
[Redacted]  
[Redacted]

DECISION

MRA/161425

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 23, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Brown County Human Services in regard to Medical Assistance, a hearing was held on December 10, 2014, at Green Bay, Wisconsin. The record was held open for 10 days for the submission of additional information.

The issue for determination is whether petitioner's community spouse requires additional monthly income to avoid financial duress.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[Redacted]  
[Redacted]  
*Redact*  
[Redacted]  
[Redacted]

Respondent:

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

By: [Redacted]  
Brown County Human Services  
Economic Support-2nd Floor  
111 N. Jefferson St.  
Green Bay, WI 54301

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # Redact) is a resident of Brown County. She currently resides in a nursing home, and her husband remains in the family home.
2. An application for nursing home MA was filed on petitioner's behalf on August 26, 2014. Petitioner was found to be eligible for MA with a monthly patient liability of \$801.00 beginning May 5, 2014. Exhibit 2.
3. Petitioner's monthly income is \$888.00 in Social Security benefits. Her husband receives \$4,172.29 monthly in pension and retirement benefits. Exhibit 2.
4. The county agency established a community spouse income allowance of \$2,585 per month. Thus none of petitioner's income was allocated to her husband; petitioner's patient liability of 801.00 was determined by subtracting her \$45 personal needs allowance, and her 42.00 health insurance cost from her income.
5. Petitioner's husband seeks to have his income allowance increased. He pays a monthly \$748.00 mortgage, which includes taxes and insurance. However, his listed monthly expenses are less than the calculated allowance.

### 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.

As a first point, 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 husband would be \$450. Just the mortgage and the utility standard total \$1,198, which is \$423.00 above \$775.50. \$2,585 *plus* \$423.00 is \$3,008.00. Thus petitioner's husband would be entitled to a monthly CSIA of \$2,898, which is the lesser of the two amounts. However, the error is inconsequential, since petitioner's husband's monthly income exceeds the maximum CSIA.

For me to increase the CSIA, the standard for raising the income allowance is whether, due to exceptional circumstances that could result in financial duress, petitioner's husband needs additional income on top of the \$2,898 already allowed to him. Thus my job is not just to look at his expenses, but verify expenses that might cause financial duress due to exceptional circumstances.

I have reviewed petitioner's list of expenses, which were timely supplied post-hearing. The sum total of all of the monthly expenses listed by petitioner's husband equal \$3,318.84. Without excluding any questionable monthly expenses, this amount is still below petitioner's husband's monthly income, and therefore the respondent has correctly determined that petitioner is not entitled to an income allocation from his spouse. I note that petitioner's husband testified as to certain liabilities that are in his name, but are paid for by other family members. Those monthly obligations would not apply to petitioner's patient liability budget. Furthermore, while the total monthly expenses of \$3,318.84 were included for discussion purposes here, I note that several of those monthly expenses would not normally be included as expenses that might cause financial duress due to exceptional circumstances.

### CONCLUSIONS OF LAW

1. The county incorrectly determined petitioner's CSIA, but that error is of no consequence to the determination of petitioner's patient liability since monthly household expenses do not exceed petitioner's husband's monthly income.
2. There is no basis to decrease petitioner's monthly patient liability because monthly expenses do not exceed petitioner's husband's monthly income.

**THEREFORE, it is**

**ORDERED**

That 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 14th day of January, 2015.

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\sPeter McCombs  
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 January 14, 2015.

Brown County Human Services  
Division of Health Care Access and Accountability