



FH  
[REDACTED]

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

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In the Matter of:

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MRA/162265

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 26, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Jefferson County Department of Human Services ["Country"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on January 15, 2015.

The issue for determination is whether 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] (not present at January 15,  
2015 Hearing)  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Represented by:

[REDACTED], petitioner's wife  
[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]; 82 years old) is a resident of Jefferson County, Wisconsin.
2. Petitioner resides in a nursing home; his wife resides in their home in the community in Jefferson County, Wisconsin.
3. Petitioner's wife's MMMNA (without a Fair Hearing or Circuit Court Order) is at least \$2,788.66 (\$2,621.67 plus an excess shelter allowance of \$166.99).
4. Petitioner claim monthly expenses for his wife of \$3,564.99 including the following:
  - (a) \$168.38; AT&T cellphone family plan;
  - (b) \$120.30; cable television & landline telephone;
  - (c) \$84.06; life insurance on his wife's life;
  - (d) \$347.52; health insurance for petitioner;
  - (e) \$350.00; credit bill minimum payments for 6 credit cards.

TOTAL of the above 5 claimed expenses: \$1,070.26.

**DISCUSSION**

When an MA recipient is in a nursing home all of that recipient's income, with certain limited exceptions, must be used to pay nursing home costs. MA pays any nursing home costs which exceed the recipient's income.

Many MA recipients who are nursing home residents are married and have spouses who live in the community. In these cases, the law recognizes that requiring all of the recipient's income to be used to pay nursing home costs may leave the community spouse in poverty. In order to prevent the impoverishment of the community spouse, the law allows the community spouse to receive the lesser of the following as monthly income: \$2,980.50; **or**, \$2,621.67 plus excess shelter allowance. This is known as the *Minimum Monthly Maintenance Needs Allowance* ["MMMNA"]. Wis. Stat. §§ 49.455(4)(a)2. & (c) (2013-14); Wis. Admin. Code § 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 is at least \$2,788.66.

The MMMNA can be increased 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 MMMNA. Wis. Stat. § 49.455(8)(c) (2013-14); Wis. Admin. Code § DHS 103.075(8)(c) (December 2008); MEH 18.6.2.Section A1. The phrase *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) (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 community spouse needs income above the level provided by the MMMNA in order

to avoid a situation that would result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs.

The following 5 monthly expenses claimed by petitioner for his wife cannot be allowed as necessary and basic maintenance needs for the reason indicated:

- (a) \$168.38; AT&T cellphone family plan -- this family plan expense is at least partly for someone other than petitioner's wife; claimed necessary and basic maintenance expenses must be solely for petitioner's wife and not for any other person;
- (b) \$120.30; cable television & landline telephone -- not a necessary and basic maintenance need (it is not necessary or basic to have cable television; it is not necessary to have both a landline telephone and a cellphone);
- (c) \$84.06; life insurance on his wife's life -- not a necessary and basic maintenance need; further, this is for someone other than petitioner's wife; claimed necessary and basic maintenance expenses must be solely for petitioner's wife and not for any other person;
- (d) \$347.52; health insurance for petitioner -- this is for someone other than petitioner's wife; claimed necessary and basic maintenance expenses must be solely for petitioner's wife and not for any other person;
- (e) \$350.00; credit bill minimum payments for 6 credit cards -- the documentation in the record of establishes that minimum payments are only a total of \$271.05 (not \$350.00).<sup>1</sup>

TOTAL of the above 5 disallowed monthly expenses: \$1,070.26.

Petitioner claims monthly expenses for his wife in the amount of \$3,564.99 which is in excess of petitioner's wife's current MMMNA of \$2,788.66. However, for the reasons detailed above, some of the monthly expenses claimed by petitioner cannot be allowed. The monthly expenses of petitioner's wife, after deducting the nonallowable expenses, do not exceed petitioner's wife's current MMMNA of \$2,788.66 (i.e. \$3,564.99 - \$1,070.26 = \$2,494.73). Thus, petitioner has failed to establish that his wife needs income above the level provided by the MMMNA.

It must be pointed out that, in addition to the above, there might also other claimed expenses that may not be allowable. The forgoing list is not necessarily exhaustive.

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<sup>1</sup> Further, the documentation in the record of this matter does not establish what the underlying purchases are and therefore no determination can be made about whether or not they were necessary and basic maintenance needs and were solely for petitioner's wife. No additional purchases should be made using these credit cards unless the purchase is a necessary and basic maintenance need solely for petitioner's wife.

**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 19th day of February, 2015

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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 February 19, 2015.

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