



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MGE/163120

PRELIMINARY RECITALS

Pursuant to a petition filed January 09, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance, a hearing was held on February 19, 2015, at Waupaca, Wisconsin.

The issue for determination is whether the Petitioner's patient liability and spousal allocation was properly determined.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Pam Kolb

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

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is an institutionalized resident of Waupaca County. Her spouse is [redacted] and she has two minor children.
2. On or about October 24, 2014, petitioner applied for Nursing Home Long Term Care. On December 3, 2014, the agency issued a Positive Notice to the petitioner informing her that her Medicaid/BadgerCare Plus application was approved effective October 1, 2014, with a nursing home patient liability of \$1,466.54/month. No spousal allocation was allowed due to [redacted]

██████'s income. A Community Dependent allowance was permitted for petitioner's two minor children in the amount of \$1,310.84.

3. Effective January 14, 2015, the respondent determined that petitioner had gross monthly unearned income of \$2,822.38. Exhibit 2.
4. Effective January 14, 2015, the respondent determined that the petitioner's husband had gross monthly income of \$3,286.40. Exhibit 2.
5. At hearing, petitioner's spouse reported monthly expenses of \$4,769.60, as detailed below:

Mortgage	\$643.25
Automobile	\$357.43
Automobile insurance	\$96.00
Medical insurance	\$363.70 (family)
Dental insurance	\$36.00
Gas, Water, Electric	\$152.00
Student Loan	\$121.20
Daycare	\$500.00
Church tithe	\$400.00
Mobile phone	\$147.02
Medication	\$650.00
Credit Card	\$43.00 (on an outstanding balance of \$2,000)
Groceries	\$400.00
Gasoline	\$200.00
Clothing	\$50.00
Children's lunches	\$50.00
Children's School Supplies	\$20.00
Children's medical	\$40.00
Medical bills	\$500 (on an outstanding balance of \$3,919.54)
6. On January 9, 2015, an appeal was filed on the petitioner's behalf with the Division of Hearings and Appeals seeking a community spouse income allocation.

DISCUSSION

Wis. Stat. § 49.455 is the Wisconsin codification of 42 U.S.C. §13964-5 (MCCA). Among other things, the "spousal impoverishment" provisions at Wis. Stat. § 49.455 direct the Department to establish an income allowance for the community spouse of an institutionalized person. That allowance set by the respondent is \$2,924.42 per month, as directed by MA policy. See, Medicaid Eligibility Handbook, § 18.6.2. The institutionalized person may divert some of her income to her community spouse rather than contributing to her own cost of care. The amount of the diverted income, when combined with the spouse's income, cannot exceed the maximum allowance determined by the agency. 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 institutionalized 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). 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. The MA Eligibility Handbook states that a court or fair hearing can increase the community spouse income allocation if it determines the spouse is not able to provide for his/her necessary and basic maintenance needs with the amount allocated. MA Handbook, § 18.6.2.

Based on this criteria I have reviewed the expenses noted at Finding # 4 and have concerns and adjustments to make:

- Petitioner's husband notes \$147.02 as a monthly expense for a mobile phone. He also testified that the family home does not have a landline. This office has routinely concluded that one phone is a necessary expense, and I note that the allowed expense is normally associated with a landline. Since there is no landline, I will allow the mobile phone expense.
- In accordance with the past decisions of this office, charitable contributions cannot be included as a necessary and basic need. Thus, I will disallow \$400/month for the charitable contributions (church tithe).
- With regard to the credit card debt, the petitioner's husband testified that he has \$2000 outstanding on a credit card. Without knowing more about the nature of the miscellaneous expenses that comprise this debt, I cannot make a determination with regard to whether they are basic and necessary. Recognizing that there are basic and necessary needs for everyone that are difficult to quantify or predict, however, I conclude that \$43.00/month is a reasonable amount for basic and necessary miscellaneous expenses and therefore included that amount in determining the allocation after the end of the year.

At hearing the petitioner's husband reported his monthly income as \$2,672.84; the January 2015 budget prepared by the respondent identified his gross income as \$3,286.40. Since the petitioner's husband did not provide further information as to whether the income he reported on Exhibit 1 was gross or net, I will utilize the respondent's income information here. Petitioner requests a spousal impoverishment allocation based on approved monthly expenses of \$4,769.60. I am reducing the amount of the requested increase by \$400 in donation expense. This results in allowable expenses of \$4,369.60. As the maximum amount of community spouse income allocation is \$2,924.42, I am finding the petitioner's community spouse income allocation should be \$1,445.18 per month. The respondent shall adjust petitioner's patient liability accordingly.

CONCLUSIONS OF LAW

That petitioner has demonstrated that a community spouse income allocation in the amount of \$1,445.18 is warranted for the period of October 1, 2014 – September 30, 2015. Thereafter, the allocation will end unless petitioner requests further review at that time.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to add a spousal allocation of \$1,445.18 per month for the period of October 1, 2014 – September 30, 2015, and adjust petitioner's patient liability accordingly. Thereafter, the allocation will end unless the petitioner requests another review and an additional allocation is ordered. The agency must take these steps within 10 days of the date of this Order.

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 25th day of March, 2015.

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 25, 2015.

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