



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MRA/163954

PRELIMINARY RECITALS

Pursuant to a petition filed February 13, 2015, under Wis. Stat., § 49.455(8), to review a decision by the Jefferson County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on March 25, 2015, by telephone.

The issue for determination is whether petitioner's wife can have her community spouse income allowance (CSIA) increased.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Mary Springer
Jefferson County Dept. of Human Services
874 Collins Rd.
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a nursing home resident of Jefferson County. His wife resides in the family home.
2. Petitioner's wife requested an increase in her CSIA effective March 1, 2015. It currently is set at \$2,980.50.

3. Petitioner's income is \$1,866 per month from social security and a pension. Petitioner's wife earns \$2,038.40 from her job.
4. Petitioner's wife's necessary monthly expenses total \$3,900 per month. She has a \$700 mortgage payment along with a \$150 home equity loan, health insurance, payroll deductions, and unusually high charge card payments of over \$600 per month.

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 \$2,980.50. 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.

The standard for raising the income allowance is whether, due to exceptional circumstances that could result in financial duress, petitioner's wife needs additional income on top of the \$2,980.50 already allowed to her. Thus my job is not just to look at her expenses, but expenses that might cause financial duress due to exceptional circumstances.

I have reviewed petitioner's wife's list of expenses which total \$3,930. While some might be considered not necessary such as life insurance, petitioner's wife forgot her payroll deductions that total \$236 per month, so they basically wash with the life insurance. It could be argued that the charge card payments are not necessary, but this office has long accepted those bills as payments that could cause financial duress, if they were owed prior to the MA application. I thus will order the county to increase the CSIA accordingly.

CONCLUSIONS OF LAW

Petitioner's wife's monthly expenses to avoid financial duress total \$3,900.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to increase the monthly income allocation of petitioner's wife to \$3,900, retroactive to March 1, 2015, and to change the monthly patient liability accordingly. The county shall take the action within 10 days 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 30th day of March, 2015

\sBrian C. Schneider
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 30, 2015.

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