



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

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In the Matter of

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

DECISION

MRA/164290

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 27, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on April 14, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the additional spousal income allocation previously allowed by ALJ Ishii for the petitioner’s wife to pay off their credit card debt should continue when the petitioner’s wife has since sold their home, and used the proceeds from the sale to pay off credit card balances and buy a condo.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Karen Pearson

Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. On March 20, 2014 ALJ Ishii issued a written decision addressing the whether there was a basis to increase the Community Spouse Income Allocation, and therefore decrease the Petitioner's Patient Liability. ALJ Ishii allowed the petitioner's wife an additional \$1400 per month above the Community Spouse Income Allocation. ALJ Ishii reasoned that the petitioner and his wife owed \$51,334.11 in credit card debt. The minimum payment for this amount of credit card debt is \$1168 per month. However, only allowing the minimum payment would not help their financial situation. ALJ determined that allowing \$1400 additional per month for payment of credit card debt was warranted because it would allow the petitioner's wife to pay off these credit card balances in approximately five years.
3. In May of 2014 the petitioner and his wife sold their home and bought a condo. They used the proceeds from the sale of their home to pay off the following credit card debts:
  - a. \$13,596 – paid to Bank of America credit card
  - b. \$10,304 – paid to █████ credit card
  - c. \$9,456 – paid to Discover Financial credit card
  - d. \$6,830 – paid to Chase credit card
  - e. \$5,608 – paid to Chase credit card
  - f. \$6,961 – paid to Bank of America credit card
  - g. \$1,858 – paid to Chase credit card
  - h. \$2,888 – paid to █████ credit card

They used the remainder of their proceeds as a down payment for a condo and for the additional fees associated with the sale of their home and the purchase of the condo.

4. The petitioner's wife continued to receive the additional \$1400 each month allocated by ALJ Ishii for credit card payments after she paid off \$57,501 in credit card debt in May of 2014.
5. Following this credit card payoff, the petitioner's wife incurred additional credit card debt. As of the date of the hearing, the petitioner's wife had approximately \$7500 in credit card debt.
6. On February 20, 2015 the agency sent the petitioner's representative a notice stating that the petitioner's monthly patient liability amount would increase from \$700.80 to \$727.80.
7. The petitioner's monthly gross income is \$3,558.52, which consists of the following:
  - a. \$1,524.00 - social security,
  - b. \$52.83 - MPS pension,
  - c. \$1,981.69 - Employee Trust Fund.
8. The petitioner's wife's monthly gross income is:
  - a. \$298.00 - Pacific Life Annuity.
9. The agency has considered the following the monthly expenses:
  - a. Condo payment including taxes and insurance - \$648.67
  - b. Condo fee - \$215.00
  - c. WE energies bill for the condo - \$143.00
  - d. Vehicle payment - \$360.88
  - e. The petitioner's wife marketplace health insurance premium - \$324.44.
10. At the previous hearing, ALJ Ishii allowed the following additional expenses:

- a. Food - \$200
- b. Gas and car maintenance - \$110
- c. Personal expenses - \$75
- d. Phone - \$30

These expenses are in addition to the \$1400 allowed each month for pay off of credit card balances.

11. Since ALJ Ishii's decision the petitioner's wife had to have emergency gall bladder surgery. She did not have insurance coverage at the time of the surgery. As a result she incurred significant medical bills. She is on monthly payment plans for these medical bills. The monthly payment plans are as follows:
  - a. Hospital bill - \$70
  - b. ER bill - \$100
  - c. Anesthesiologist - \$75
  - d. Walk-in-Clinic - \$83
  
12. The petitioner's wife submitted proof that her monthly expenses in addition to the above-listed medical bills are as follows:
  - a. Mortgage and taxes - \$648.67
  - b. Condo fees - \$225.00
  - c. House Flood Repair Loan - \$45.00
  - d. February WE Energies Bill - \$178.86
  - e. Time Warner Cable Bill - \$117.99
    - i. This includes land line telephone, WI FI, and a premium cable service with HBO and a DVR.
  - f. Cell Phone Bill - \$66.33
  - g. Car Payment for 2014 Honda CRV - \$360.88
  - h. Auto Insurance - \$73.23
  - i. Gas - \$54.47
  - j. Credit Card Payments - \$614.00
  - k. Hospital bill - \$70
  - l. ER bill - \$100
  - m. Anesthesiologist - \$75
  - n. Walk-in-Clinic - \$83
    - i. Paying this amount should have resulted in this bill being paid off prior to the undersigned ALJ releasing the decision.
  - o. Health Insurance through the market place - \$324.44
  - p. Prescriptions - \$38.79
  - q. Monthly Food Bill - \$357.24
  - r. Petitioner's life insurance - \$13.00

- s. Pewaukee Post Office (Stamps) - \$12.00
  - t. [REDACTED] (light bulbs and coat hooks) - \$59.07
  - u. [REDACTED] (clothes and toiletries) - \$65.00
  - v. Cash Withdrawals for spending money - \$90.00
13. On February 27, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

### DISCUSSION

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*

In this case the issue is the Community Spouse's Income Allocation. State and federal medical assistance laws contain provisions that allow an institutionalized person to allocate some of her income to her spouse so that he 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.*) The CSIA 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 \$2,980.50 or \$2,621.67 plus excess shelter costs. *MEH § 18.6.2*. Excess shelter costs are shelter costs above \$756.50. *Id.* 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*.

The current MMMNA for this petitioner's spouse is \$2980.50. The spouse's income is \$298.00, which results in a community spouse's income allocation of \$2682.50. The petitioner's wife argues that this amount is insufficient to support her monthly expenses. I note that this community spouse's income allocation would result in a patient liability amount of \$1,174.02.

I have looked at the expenses submitted by the agency and the petitioner's wife. Please note that I am only allowed to order an additional amount for the community spouse's income allocation in exceptional circumstances resulting in financial duress. This additional amount is met to cover only necessary and basic maintenance needs.

- Mortgage and taxes - \$648.67
- Condo fees - \$225.00
  - Although the agency testified that the condo fees were \$215, I conclude that the petitioner's wife is credible when she states that the monthly condo fees went up to \$225.
- House Flood Repair Loan - \$45.00
- WE energies bill for the condo - \$143.00
  - The petitioner's wife submitted February's WE energies bill. She is not on a budget plan, and the amount due for that bill was \$178.86. February is traditionally the most expensive utility bill for the year in this area given the cold weather. It follows then that the agency's representation of \$143.00 is a more accurate representation of the average monthly utility over a 12 month period. I note that the electricity charge on the February bill is \$114.80 and the gas charge is \$64.06. These numbers further support that an average monthly utility bill for this condo is \$143.00.
- Time Warner Cable Bill - \$0
  - I have not allotted any money for this cable bill. This cable bill is for a premium cable service including HBO and DVR. This is beyond the scope of necessary and basic maintenance needs. In addition to the cable bill it includes WIFI and telephone. WIFI is beyond the scope of necessary and basic maintenance needs. The petitioner's wife has not shown a need for this service for employment or any other reason. An additional telephone is beyond the scope of necessary and basic maintenance needs because I have allowed for a cell phone expense below.
- Cell Phone - \$45.00
  - I have reviewed and considered the petitioner's \$66.33 cell phone bill. The bill lists voice, messaging, and data. It was impossible to tell the cost for each of these services as there is one monthly charge. However, given that the petitioner's wife has all three services as well as the common cost of a basic cell phone plan, I find that \$45.00 is a more accurate cost for a basic cell phone plan without messaging and data. A messaging and data plan is beyond the scope of necessary and basic maintenance needs.
- Car Payment - \$250
  - I note that at the last hearing, ALJ Ishii ordered an additional \$110 for gas and car maintenance. It appears that the petitioner's wife did not have a car payment as of the date of that hearing. After that hearing the petitioner's wife was able to purchase or lease a 2014 Honda CRV. These expenses are met to cover necessary and basic maintenance needs. A \$250 monthly car payment is an appropriate necessary and basic expense. The petitioner's wife has separated her gas and car maintenance costs from the actual car payment. Gas and car maintenance costs are necessary and basic expenses, which I have accounted for below. A monthly car payment of \$360.88 in addition to the cost of gas, insurance and other maintenance is beyond the scope of necessary and basic maintenance needs.
- Auto Insurance - \$73.23
- Gas - \$54.47
- Car Maintenance - \$50.00
  - This amount accounts for what is required to maintain her car in basic working order.

- Monthly Credit Card Bills - \$0
  - The petitioner's wife requests an additional \$614 for monthly credit card bills. When the petitioner's wife sold the condo, she paid off approximately \$57,000 in credit card balances. She then received additional money for approximately 10 months to cover credit card payments for credit cards that had been paid off. These new credit card balances go beyond the scope of necessary and basic maintenance.
- Hospital bill - \$70
- ER bill - \$100
- Anesthesiologist - \$75
- Walk-in-Clinic - \$0
  - This bill will be paid off prior to my decision.
- Health Insurance through the market place - \$324.44
- Prescriptions - \$38.79
- Monthly Food Bill - \$357.24
- Petitioner's life insurance - \$0
  - This is beyond the scope of a necessary and basic maintenance need.
- Pewaukee Post Office (Stamps) - \$12.00
- [REDACTED] (light bulbs and coat hooks) - \$0
  - Some of this was a one-time purchase. I have allowed additional money each month for basic condo maintenance as stated below.
- Basic Condo Maintenance - \$25
  - I believe that \$25 each month should cover light bulbs and other necessary basic maintenance items for a condo. Much of a condo's maintenance is included in the condo fees, which I have allowed for above.
- [REDACTED] (clothes and toiletries) - \$100
- Cash Withdrawals for spending money - \$0
  - The petitioner's wife did not specify what these items were for. I have allowed money for clothes and toiletries as stated above. I allowed slightly more money there to cover for some of these incidental expenses the petitioner's wife is likely referring to.

The **total** for all of these allowable expenses is **\$2636.84**.

In this case given the current MMMNA for this petitioner's spouse's income, the community spouse's income allocation would be \$2682.50. This community spouse's income allocation is greater than this community spouse's monthly expenses for her necessary and basic maintenance needs. Thus, although I have the authority to order an additional amount for the community spouse's income allocation in exceptional circumstances resulting in financial duress, this case does not present such a situation.

I note that the agency had incorrectly calculated the petitioner's spouse's income. She provided proof that she was no longer employed at [REDACTED] or [REDACTED] and no longer receiving unemployment benefits. The only gross income for the petitioner's spouse is \$298.00 from an annuity. Because the agency

incorrectly calculated the petitioner's wife's monthly income, the agency incorrectly calculated the patient liability amount.

### CONCLUSIONS OF LAW

The current MMMNA for the petitioner's community spouse is sufficient to cover the community spouse's necessary and basic maintenance needs.

**THEREFORE, it is**

### ORDERED

That this case is remanded to the agency to recalculate the patient liability amount consistent with a monthly income of \$3,558.52 for the petitioner and \$298.00 for the petitioner's spouse. The current MMNA for the community spouse is \$2682.50. In all other respects the appeal is dismissed. The agency shall comply with this order within 10 days of the date of 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 Milwaukee,  
Wisconsin, this 15th day of May, 2015

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\sCorinne Balter  
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 May 15, 2015.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability