



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

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In the Matter of

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

DECISION

MRA/164293

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 25, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on May 05, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether an increase in the Minimum Monthly Maintenance Needs Allowance (MMMNA) and therefore, an adjustment in the Community Spouse Income Allocation (CSIA) and Patient Liability is warranted.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

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

By: Desiree Pollard-Badjii, Income Maintenance Specialist Advanced  
Milwaukee Enrollment Services  
1220 W. Vliet St., Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On December 29, 2014, the Petitioner submitted an application for medical assistance. (Exhibit 45)

3. January 12, 2015, Milwaukee Enrollment Services (the agency) sent the Petitioner a notice indicating that his application for Nursing Home Long Term Care benefits was approved effective October 1, 2014. The notice also advised the Petitioner that his patient liability was as follows:

October	\$1335.40
November	\$1335.40
December	\$2398.09
January forward	\$2,641.69

(Exhibit 47)

4. Petitioner has a community spouse. (Testimony of the spouse and Ms. Desiree Pollard-Badjii)
5. Petitioner's spouse filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 25, 2015. (Exhibit 1)

### DISCUSSION

The Petitioner filed an appeal contesting the agency's calculation of the CSIA. The agency determined the CSIA to be zero, because the income it calculated for Petitioner's spouse exceeded the Minimum Monthly Maintenance Needs Allowance. (MMMNA)

State and federal medical assistance laws contain provisions that allow an institutionalized person to allocate some of his income to his spouse so that she 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.)

Generally speaking, the Community Spouse Income Allocation 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 at the time in question was 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 \$786.50. Id.

Administrative law judges (ALJs) have the authority to increase the MMMNA when it 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*.

#### I. THE INITIAL MMMNA DETERMINATION PER *MEH 18.6.2*

In Petitioner's case, the agency determined the MMMNA to be \$2,980.50, based upon the provisions of *MEH § 18.6.2*. (See Exhibit 44)

Community spouse shelter costs include the community spouse's expenses for:

1. Rent
2. Mortgage principal and interest
3. Taxes and insurance for the principal place of residence. This includes renter's insurance.
4. Any required maintenance fee if the community spouse lives in a condominium or cooperative (i.e. Condo association fees)
5. The standard utility allowance established under the FoodShare program.

Applying the foregoing to Petitioner’s spouse, her shelter costs are as follows:

	\$2,110.40 Mortgage (includes escrow for property tax and mortgage)
	+\$446.00 Standard Utility Allowance from the FoodShare Wisconsin Handbook §8.1.3
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	\$2556.40 Total Monthly Shelter Costs
-	\$786.50
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	\$1769.90 Excess Shelter Costs

\$2621.67 + \$1769.90 = \$4391.57

\$2,980.50 is less than \$4391.57; so the agency correctly followed the Medicaid rules and implemented an MMMNA of \$2,980.50, per MEH 18.6.2.

II. SHOULD THE MMMNA BE INCREASED BEYOND \$2980.50, DUE TO THE SPOUSE’S MONTHLY EXPENSES?

The Petitioner’s spouse provided testimony and documentation concerning expenses for the Petitioner, for herself and for her disabled son. However, the only expenses that may be counted are the **basic and necessary expenses of the spouse** that must be paid, in order to prevent her impoverishment. Of the expenses presented, the allowable **monthly** expenses are as follows:

Chapter 13 court ordered monthly payment	\$995.00
Cell Phone (Spouse uses it for work)	\$44.00 per month
Internet service (spouse uses it for work)	\$49.25 per month (\$147.75/3 – phone*, cable**, internet)
*Land line phone bill – Not allowable, since a cell phone is being allowed.	\$0
**Cable Television is not a basic and necessary expense and as such, is not allowable.	\$0
Annual eye exam / glasses	\$32.92 (\$395 / 12 months)
Bi-Annual Dental Exam	\$72.00 (\$432 / 6 months)
Water and Sewer	\$256.00 per month (averaged)
WE Energies	\$217.00 per month
Mortgage (includes insurance and taxes)	\$2110.40
Car Insurance (for the spouse’s vehicle – 2008 Subaru Forester)	\$113.40 (\$680.38 / 6 months)
An additional allowance for insurance on two other vehicles, a 1985 Jaguar and a 2007 Jeep Compass will be granted for a period of 12 months to give the Petitioner’s spouse an opportunity to sell the vehicles.	\$226.80 per month
Gas for one vehicle (2008 Subaru Forester)	\$87.50 per month
Oil Changes (once every 3 months)	\$12.67 per month
Other Car Maintenance	\$70.44 per month (\$845.22 / 12 months)
Bottled Water Service (Lead pipes make tap water unsafe)	\$19.70 per month
Household Supplies (paper, pens, soap, cleaning supplies, toothpaste, etc.)	\$80.00 per month
Clothing – request for \$140.00 per month is excessive	\$50.00 per month
Groceries – request for \$500 is excessive	\$194 per month (See FoodShare maximum for one person; FSH §8.1.2) Looking at the grocery expenditures noted in Exhibit 28 and taking a four

	month average, December through April, \$194 per month should be adequate.
Hair Cut – request for \$95 per hair cut every two months is excessive	\$25.00 per month
Attorney’s Fees	\$29.17 (\$350 / 12 months)
Prescription Medication / Prescribed Supplements	\$19.00 (\$57.02 /3) + \$1.00 for other Rx = \$20.00 total
Medicare Premium	\$104.90
Small Bank Loan	\$16.00
General House Maintenance (gardening; shoveling; salting, snow removal, lawn care, carpet cleaning)	\$50.00 per month (\$600 per year)
Taxes (Federal, State, FICA, Medicare, etc) withheld	\$229.86
Total Monthly Expenses:	\$5106.01

(See Exhibits 3, 6, 7, 9, 12, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 33)

The total of the spouse’s monthly expenses, \$5106.01, exceeds the standard MMMNA of \$2,980.50. MEH §18.6.2 As such, an increase in the MMMNA is warranted.

Petitioner’s spouse should note that if she incurs additional expenses for major repairs, i.e. repairing / replacing a roof, or moving expenses that she can file a new appeal requesting review of the MMMNA. If Petitioner’s spouse does this, she should be prepared with documentation of the expense, i.e. a bill and /or contract for the work to be performed.

It should be noted that not all of the expenses claimed by the Petitioner’s spouse could be allowed in determining the appropriate MMMNA, because they were either expenses of the Petitioner, expenses of their adult son who is disabled, or were otherwise determined not to be a basic and necessary expense, i.e. memberships to health clubs/facilities is not basic and necessary, unless there is a specific therapy prescribed by a physician. A person does not need such memberships to engage in a general exercise program.

With regard to life insurance premiums, they are not a basic and necessary expense of the spouse, unless tied to a burial trust. There is no documentation in the record showing the spouse’s life insurance is tied to such a trust. The premium for the spouse’s life insurance might also be allowable, if there is documentation to substantiate the claim that he is a tax dependent. However, that was not made part of this record and so, the expense will not be allowed at this time.

### III. THE COMMUNITY SPOUSE INCOME ALLOCATION

As discussed above, the formula for calculating the CSIA is as follows:

MMMNA  
-Spouse’s monthly gross income

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Community Spouse Income Allocation

The agency determined the Community Spouse Income Allocation to be zero, because the spouse’s income exceeded the standard MMMNA. However, as discussed above, the MMMNA needs to be increased.

*October, November, December 2014*

For October, November, December 2014, the agency determined the spouse’s income to be \$4705.89 per month.

In 2014, the Petitioner’s spouse received Social Security Income in the amount of \$1,604.00 per month. (Exhibit 40) She received income from an MPS pension, in the amount of \$353.52 per month and from an ETF pension in the amount of \$2,267.79 per month. (Exhibits 39 and 41)

At the time of application in December 2014, Petitioner's spouse also had earned income from a tutoring program that fluctuated greatly, from zero earnings up to \$1705.00 per pay check. "If neither the amount, nor the frequency of payment is predictable, do not average; count income only for the month in which it is received." *MEH §15.2.3*

So, it appears the spouse did not have earned income in October or November 2014, but in December she had income in the amount of \$293.50. (Exhibits 9 and 37)

Totaling the spouse's income for October and November 2014, we have:

\$1,605.00 Social Security
+ \$353.52 MPS Pension
+\$2,267.79 ETF Pension
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\$4226.31 Total Income

So for October 2014 the CSIA should have been:

\$5106.01 MMMNA
-\$4226.31 Spouse's monthly gross income
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\$879.70 Community Spouse Income Allocation

Totaling the spouse's income for December 2014, we have:

\$1,605.00 Social Security Pension
+ \$353.52 MPS Pension
+\$2,267.79 ETF Pension
+ \$293.50 Earned Income
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\$4519.81

So for October 2014 the CSIA should have been:

\$5106.01 MMMNA
-\$4519.81 Spouse's monthly gross income
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\$586.20 Community Spouse Income Allocation

*January 2015 forward*

Beginning in January 2015, the Petitioner's spouse received Social Security Income in the amount of \$1,630.90 per month. (Exhibit 40) She continued to receive income from an MPS pension, in the amount of \$353.52 per month and from an ETF pension in the amount of \$2,267.79 per month. (Exhibits 39 and 41)

In January 2015, the Petitioner had earned income in the amount of \$357.50. (Exhibits 9 and 37)

Following prospective budgeting from the date of application, we have a monthly income calculation of:

\$1,630.90 Social Security
+ \$353.52 MPS Pension
+\$2,267.79 ETF Pension
+\$357.50 earned income

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\$4609.71 Total Income

So for January 2015 going forward the CSIA should have been:

\$5106.01 MMMNA  
 -\$4609.71 Spouse's monthly gross income

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\$496.30 Community Spouse Income Allocation

The agency will have to re-determine the Petitioner's patient liability, using the CSIA indicated above.

If Petitioner's Spouse disagrees with this re-determination, she will have to file a NEW appeal.

The Petitioner's spouse indicated that her income may be decreasing in the future. If that happens, she must report it to the agency and provide verification of the loss of income, so that the agency can account for the change in income.

#### IV. DEPENDENT FAMILY MEMBER INCOME ALLOCATION

Federal regulations also allow the institutionalized person to allocate income to dependent family members, which can include both minor children and children 18 years or older who are claimed as dependents for tax purposes and who live with the community spouse. See Wis. Stat. § 49.455 and 42 U.S.C. §13964-5; also see *MEH §§18.1 and 18.6.1*. The allowance for dependent family members is calculated as follows:

\$655.42 (the maximum dependent family member income allocation)  
 - Tax Dependent's Income

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Dependent Family Member Income Allocation

*See MEH §§18.6.3*

The Petitioner and his spouse have a disabled adult son who lives with the spouse. Though they do not have legal guardianship of the son, if the Petitioner and spouse claim the son as a dependent on their taxes, the agency should have allowed a Dependent Family Member Income Allocation. It did not.

Because it is unknown whether the Petitioner's son is a tax dependent, a final calculation of the Petitioner's patient liability cannot be done on this review. As such, the agency will have to request verification of whether the son is claimed as a tax dependent and if so, adjust the Petitioner's patient liability accordingly.

If the Petitioner or his spouse disagrees with the determination they will have to file a NEW appeal.

#### **CONCLUSIONS OF LAW**

An increase in the MMMNA and accordingly an adjustment in the CSIA and Patiently Liability are warranted.

**THEREFORE, it is ORDERED**

That the agency:

- 1) Seek verification of whether the adult son is claimed as a tax dependent and if so, verification of his income.
- 2) Immediately upon receipt of verification, the agency shall re-determine the Petitioner's patient liability for October 2014 forward, allowing for a Dependent Family Member Income Allocation (if appropriate).

- 3) In its redetermination of Petitioner's patient liability, the agency shall also use an MMMNA of \$5106.01 and a CSIA of \$879.70 for October and November 2014, a CSIA of \$586.20 for December 2014 and a CSIA of \$496.30 for January 2015 going forward.
- 4) The agency shall then issue a notice to the Petitioner and his spouse advising them of the redetermination of the Patient Liability.

The agency shall take all administrative steps necessary to complete these tasks within 20 days of this decision.

The agency shall use the \$5106.01 MMMNA until June 2016.

### 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 you could not have presented at the hearing, even if you acted with due diligence, and that would change the outcome of the hearing. 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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\sMayumi M. Ishii  
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.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability