



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MRA/164555

PRELIMINARY RECITALS

Pursuant to a petition filed March 11, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance, a hearing was held on April 16, 2015, at Oshkosh, Wisconsin.

The issue for determination is whether Petitioner's community spouse's income allocation (CSIA) may be increased (thus reducing Petitioner's patient liability).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Janet Hertzberg

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner has a community spouse and filed this appeal seeking an increase in the community spouse income allocation.

3. Petitioner's gross income is \$1379.90 and consists of Social Security benefits. After her Medicare Part A & B premiums and a \$45.00 personal allowance, the agency determined that the balance of \$1230.00 is Petitioner's patient liability.
4. Petitioner's community spouse's gross monthly income is \$4228.90 and consists of a pension of \$3564.00, Social Security of \$514.90 and a VA life insurance rider of \$150.00.
5. Petitioner was represented at the hearing by her daughter. Her best estimate as to Petitioner and her husband's finances was included in some detail as Exhibit D. It need not be reproduced here completely but indicates income as noted in Finding #s 3 and 4. Expenses were noted to total \$5773.43. This included medical and insurance expenses of \$871.74 and living expenses of \$4901.69. Petitioner's Medicare Part A and B premium of \$104.90 and her patient liability of \$1230.00 are included in the \$5773.43 so, with these subtracted, Petitioner's community spouse has expenses of \$4438.53.

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)*. However, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of an institutionalized person so that she does not fall into poverty. *See Wis. Stat. § 49.455 and 42 U.S.C. § 13964-5*; also see *Medicaid Eligibility Manual (MEH), §18.1*. An institutionalized person may allocate some of his/her income to the community spouse. *MEH, §18.6.1*. The minimum monthly maintenance needs allowance (MMMNA) currently is the lesser of \$2,980.50 or \$2,621.67 plus excess shelter costs. *Medical Eligibility Handbook (MEH), § 18.6.2*. Excess shelter costs are shelter costs above \$786.50. *Id.*

As Petitioner's community spouse has income in excess of the lesser of these two allocations, \$2980.50, the agency did not allocate any of Petitioner's income to the community spouse.

Administrative law judges (ALJs) have the authority to increase the CSIA above the MMMNA where the MMMNA is insufficient to meet a particular community spouse's *basic* maintenance needs. *Wis. Stat. §49.455(8)(c); Wis. Admin. Code §DHS 103.075(8)(c); Medicaid Eligibility Handbook 18.6*. However, an increase in the CSIA above the MMMNA can be made through the fair hearing process only if it is established that the community spouse requires income above the level provided by the MMMNA due to the existence of "exceptional circumstances resulting in financial duress" for the community spouse. *Wis. Stat. §49.455(8)(c)*. Further, "... 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)*.

Thus the standard to be applied by the Division of Hearings and Appeals in making a determination as to whether the CSIA may be increased is whether leaving the CSIA at the standard limit will result in financial distress for the community spouse such that the community spouse is unable to meet necessary and basic maintenance needs.

Based on this criterion, I have reviewed the expenses noted submitted on behalf of Petitioner and her husband (again, Exhibit # D). As noted in the Findings, Petitioner's community spouse has expenses of \$4438.53. There are, however, expenses which are not necessary and basic maintenance needs. This includes \$70.00 for house cleaning and \$135.00 for cable and a landline as well as \$60.00 for a cell phone. Even with various taxes only about \$30.00 of the combined cable/landline bill is attributable to the phone. Petitioner's community spouse has hearing issues so needs a landline that flashes a light rather than ringing and it is reasonable to have a cell phone plan for emergencies and communication when he visits Petitioner. Nonetheless, there are less expensive cell plans than \$60.00 per month.

Regardless, leaving the patient liability and Part A/B premiums out of the expenses as they are covered by Petitioner's income and eliminating the cleaning person (\$70.00) and the cable portion of the cable/phone

bill (about \$100.00) brings the community spouse's expenses to \$4268.43 – about \$40.00 above his income of \$4228.90. With a less expensive cell plan his income is equivalent to expenses. I am, therefore, declining to increase the community spouse income allowance.

CONCLUSIONS OF LAW

That the evidence does not demonstrate that Petitioner's community spouse is eligible for an increase in the community spouse income allowance.

NOW, THEREFORE, it is

ORDERED

That this appeal is 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 Milwaukee,
Wisconsin, this 1st day of June, 2015

\sDavid D. Fleming
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 June 1, 2015.

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