



FH

[REDACTED]

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

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In the Matter of

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

DECISION

MRA/165330

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 08, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Ozaukee County Department of Social Services in regard to Medical Assistance, a hearing was held on May 14, 2015, at Port Washington, 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]  
[REDACTED]

Respondent:

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

By: Pahoua Vang

Ozaukee County Department of Social Services  
121 W. Main Street  
PO Box 994  
Port Washington, WI 53074-0994

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County.

2. Petitioner has a community spouse and filed this appeal seeking an increase in the community spouse income allocation (CSIA).
3. Petitioner's gross income is \$3437 and consists of Social Security benefits of \$1773 (this is after Part A&B premiums of \$104.90); a private pension of \$368 and another private pension of \$1296.
4. Petitioner's community spouse's gross monthly income is \$980 and consists of a pension of \$220 and Social Security of \$760 (this is after Part A & B premiums of \$104.90).
5. Total income for Petitioner and spouse is \$4417 (again, after Part A & B premiums).
6. The agency determined that Petitioner's community spouse has shelter expenses sufficient to bring the community spouse income allocation to the maximum of \$2931. This is based on rent of \$950, renter's insurance of \$7.50, a phone expense of \$30 and a utility allowance for gas. The agency determined Petitioner's community spouse expenses to be \$2000.70 and that Petitioner's patient liability is \$1392.01.
7. Petitioner's community spouse's monthly expenses are estimated to be the following:

Rent	\$950.00
Renter's insurance	\$7.50
Food	\$400.00
Gasoline	\$200.00
Car insurance	\$78.00
Cable	\$95.00
Storage	\$40.00
Cell phone	\$50.00
Health Insurance	\$171.61
Part D	\$15.70
Visa	\$550.00 (based on \$3000 balance)
Kohl's	\$225.00 (based on \$450.00 balance)
Gifts	\$200.00
Life Insurance	\$14.29
Fed Income tax	\$35.00
These expenses total:	\$3032.10.

### **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 \$2,621.67 plus excess shelter costs to a maximum of \$2931.00. *Medical Eligibility Handbook (MEH), § 18.6.2*. This increases July 1, 2105 to \$2655.00. *See Operations Memo, # 15-21, effective July 1, 2015*. Here is no increase in the MMMNA based on excess shelter costs noted in the Operations Memo. Excess shelter costs are shelter costs above \$786.50 but that increases effective July 1, 2015 to \$796.50, *Id.*, and these consist of:

- Community spouse shelter costs include the community spouse's expenses for:
- i. Rent.
  - ii. Mortgage principal and interest.
  - iii. Taxes and insurance for principal place of residence. This includes renters insurance.

- iv. Any required maintenance fee if the community spouse lives in a condominium or cooperative.
- v. The standard utility allowance established under the FoodShare program:

If <u>Community Spouse</u> pays:	Add
Heat and utilities	See <u>8.1.3</u> of the FoodShare Handbook for the standard utility allowances.
Utilities only	" "
Telephone only	" "
If the community spouse lives in a condominium or cooperative where the maintenance fee includes utility expenses, reduce the standard utility allowance by the amount of utility expenses included in the maintenance fee.	

*Id.*

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.

The first determination is to establish the minimum monthly maintenance needs allowance (MMMNA). Again, it is \$2621.67 plus shelter expenses in excess of \$786.00 to bring the maximum community spouse allowance to \$2931.00; in other words, excess shelter expenses of about \$310.00 bring the MMMNA to \$2931. As those shelter expenses are about \$1430 with the allowances, Petitioner’s community spouse is at the \$2931 without additional allocation by the hearing process.

To determine whether Petitioner’s community spouse expenses represent necessary and basic maintenance needs, I have reviewed the expenses noted at Finding # 7. I am making a number of other adjustments. Specifically, the food budget is very high for one person and I am reducing that by \$200 to approximate the FoodShare maximum of \$194. *See FSH, §8.1.2.* Second, gifts (\$200), storage (\$40) and cable (\$95) are not basis and necessary. Again, the phone maximum is \$30 so that expense is reduced by \$20. This reduces Petitioner’s community spouse expenses by \$555.00. Thus expenses are \$2470. This includes a Kohl’s payment of \$225.00 which should not be for more than 2 months and a \$550.00 Visa payment that should last no more than 6 months. As allowable expenses are less than the MMMNA of \$2931.00 no increase can be made.

**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**

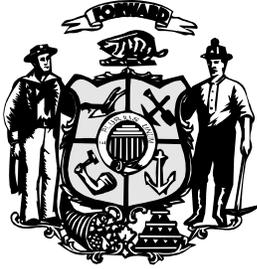
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 26th day of June, 2015

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\sDavid D. Fleming  
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 June 26, 2015.

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