



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MRA/165864

PRELIMINARY RECITALS

Pursuant to a petition filed May 5, 2015, under Wis. Stat., § 49.455(8), to review a decision by the Marathon County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on July 22, 2015, by telephone. A hearing set for July 1, 2015 was rescheduled at the petitioner's request. The hearing was a rehearing granted by the Division of Hearings and Appeals on June 15, 2015. The record was held open seven days for submission of additional information; the information was received.

The issue for determination is whether petitioner's wife is entitled to an increase in her community spouse income allocation.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Sherry Seubert
Marathon County Dept. of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. Petitioner has been in a nursing home since January, 2015 and is eligible for nursing home MA. Since February 1, 2015 petitioner has had a monthly cost of care of \$1,485. His monthly income is \$1,530 from social security.
3. Petitioner's wife lives in the community. She earns \$3,020.80 per month from her job. On May 4, 2015, she requested an increase in her community spouse income allocation (CSIA).
4. The county set the CSIA at \$2,980.50, the maximum allowable. Because petitioner's wife's monthly gross income was higher than that amount, none of petitioner's income was allocated to his wife.
5. Petitioner's wife has monthly, necessary expenses totaling \$4,400. She has a monthly rent and utilities, payroll deductions, and typical expenses for gas, groceries, and utilities. She also has substantial debts, primarily from petitioner's medical providers prior to MA eligibility. She has a monthly garnishment of \$478.96 on a back medical bill, along with three other loans covering old expenses. She also has some \$13,000 in back medical bills that are not covered by the garnishment or loans.

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 reviewed petitioner's list of expenses. I have determined that petitioner needs \$4,400 per month to avoid duress. Her high expenses are largely related to the high debts from her husband's pre-MA care. I did not count some of the expenses, such as a home security system, Netflix, and

charitable donations, but even without those costs the expenses are still over \$4,000 (the actual payments on the medical bills are uncertain, I estimated a reasonable amount). I will order the increase back to February 1, 2015, three months prior to the request for the increase.

CONCLUSIONS OF LAW

Petitioner's wife's monthly expenses to avoid financial duress total \$4,400.

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 \$4,400, retroactive to February 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 28th day of July, 2015

\sBrian C. Schneider
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 July 28, 2015.

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