



FH
[REDACTED]

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

In the Matter of

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

DECISION

MRA [REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed June 23, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a hearing was held on July 23, 2015, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner can allocate more of his income to his wife to help her meet her minimum monthly needs.

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: [REDACTED]
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.
2. The petitioner receives medical assistance through one of the program's waivers.

3. Each month, the petitioner receives \$1,212.57 from a pension and \$1,455 from social security and his wife receives \$676 from social security.
4. The county agency allowed the petitioner to allocate \$1,979 to his wife so that, with her income, she had \$2,655 to meet her minimum monthly needs.
5. The average monthly cost of food for a single woman from 51 through 70 years old is \$163.50 for a thrifty-cost plan, \$203.30 for a low-cost plan, \$253.10 for a moderate-cost plan, and \$304.50 for a liberal-cost plan. <http://www.cnpp.usda.gov/sites/default/files/CostofFoodJul2015.pdf>.
6. The petitioner's spouse requires no more than \$1979 of her husband's income to meet her minimum monthly needs.

DISCUSSION

Institutionalized persons who receive medical assistance must “apply their available income toward the cost of their care.” Wis. Admin. Code § DHS 103.07(1)(d). Those receiving medical assistance through one of the waiver programs are considered institutionalized. *Medicaid Eligibility Handbook*, § 27.4. But medical assistance law contains provisions that grant an allowance to the spouse of an institutionalized person or waiver recipient so that she does not fall into poverty. *See* Wis. Stat. § 49.455(4). The allowance, called the minimum monthly maintenance needs allowance, currently is the lesser of \$2,898 or \$2,585 plus excess shelter costs. *Medical Eligibility Handbook*, § 18.6.2. Excess shelter costs are shelter costs above \$775.50. *Id.* The agency has allocated \$2,655 to the petitioner's spouse. After considering her excess shelter expenses, the county agency allotted the maximum amount of \$2,655. It allowed her husband to allocate \$1,979 of her income to meet this level. She requests more.

The needs allowance can be increased at a fair hearing. Because any additional amount given to the community spouse is a taxpayer-financed subsidy in the form of medical assistance, the law restricts the administrative law judge's ability to raise the limit. Wisconsin law provides the following test for the exception:

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's monthly income allowance under sub. (4)(b).

Wis. Stat. § 49.455(8)(c).

Thus a hearing officer may increase the maximum allocation ceiling only by amounts needed to allow the community spouse to avoid financial duress and to meet necessary and basic needs. This means that certain expenses that are for desirable things are rejected. For example, the Division of Hearings and Appeals has long and consistently denied donations, including those to a church. *See, e.g., DHA Decision Nos. MRA-45/#22021, MRA-32/22456, MRA-05/37611, MRA-13/45972, and MRA-14/22543.*

The petitioner's spouse submitted a budget showing she required \$2,853.17 for her expenses. This amount does not include household repairs such as those needed to her roof. But they do include amounts that go well beyond what she needs to meet her minimum monthly needs. For example, she requests \$200 a month for cigarettes. She has a legal right to smoke, but she has no right to have the state's taxpayers subsidize her habit by contributing more to her husband's medical care. She also request \$350 a month for food. According to the United States Department of Agriculture, a single woman must spend \$163.50 for a thrifty-cost food plan, \$203.30 for a low-cost plan, \$253.10 for a moderate-cost plan, and \$304.50 for a liberal-cost plan. Because her allowance is meant to help her meet her *minimum* monthly needs, one could

argue that she is entitled to no more than \$163.50 for her food. But even a moderate-cost plan reduces her budget by almost another \$100. She contends she spends \$75 a week on gas to go to the doctor, which when multiplied by the 4.3 weeks in the average month totals \$322.50, Assuming her car gets 20 miles a gallon and gas is \$3 per gallon—a generous assumption because it is now almost a half dollar less than this—she can drive 2,150 miles on this amount of money. There is no evidence that she drives anywhere near this amount. She seeks \$200 a month for maintenance on her house. This includes mowing her lawn and shoveling her sidewalks, which she says she cannot do because she has had skin cancer. This makes sense in the summer but not in the winter when the sun's rays are indirect and one is bundled in clothing that covers the entire body. She lists her cable, telephone, and internet bill as \$250 per month. I assume this is correct, but it is beyond what is necessary to meet her minimum monthly needs. A person can put an antenna on the roof and receive additional programs through internet services such as Netflix and Hulu. Finally, she seeks enough money to care for four dogs. I am aware that people become attached to their pets and will not give them up. But while having this many dogs may be desirable to her, the costs entailed in caring for them are not part of her necessary and basic needs. Based upon all of these factors, I find that she has not established that she is entitled to any additional income from her husband.

A question was raised concerning whether the \$240 that the petitioner pays to his managed care organization to cover the cost of his group home could be waived so that he can contribute toward his wife's needs. Because she has not established that she requires more of his income to meet her needs, it is not necessary to answer this question.

CONCLUSIONS OF LAW

The petitioner's spouse has not proved by the preponderance of the credible evidence that she requires more than the \$1,979 allocated from her husband's income to meet her minimum monthly needs.

THEREFORE, it is

ORDERED

The petitioner's 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.

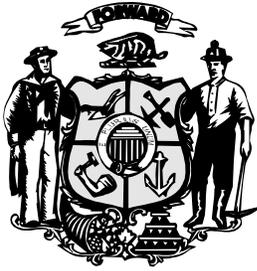
APPEAL TO COURT

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 Madison,
Wisconsin, this 4th day of September, 2015

\sMichael D. O'Brien
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 September 4, 2015.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability