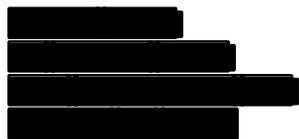




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MRA - 174970

PRELIMINARY RECITALS

Pursuant to a petition filed on June 13, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Marathon County Department of Social Services regarding Medical Assistance (MA), a hearing was held on July 27, 2016, by telephone.

The issue for determination is whether petitioner's community spouse requires additional monthly income to avoid financial duress.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. Petitioner's spousal allocation was adjusted by a 2012 Order of the Division of Hearings and Appeals, see DHA Decision MRA/139362. The Decision set the spousal allocation at \$5,046.00 for 53 months, reverting to \$3,916.00 thereafter. When the term of that order expired on June 30, 2016, the income allocation was continued at \$3,916.00. None of petitioner's income is allocated to his wife as of July 1, 2016
3. Petitioner's monthly income is \$1,586.00. His wife's monthly income is \$4,074.80.
4. Beside regular monthly expenses the couple has substantial credit card debt, with monthly payments alone on that debt totaling approximately \$1,425 per month. They also have a first and second mortgage with a combined monthly payment of \$1,361. Total necessary monthly expenses including the consumer debt are \$4,530.68.

### 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. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat., §49.455(1).

The allowance set by the county in this case, based upon a prior DHA order, is \$3,916.00. See DHA Decision MRA/139362, and 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 other specified allowances 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 \$4,074.80 already budgeted for her. Thus my job is not just to look at her expenses, but expenses that might cause financial duress due to exceptional circumstances.

There might be a political argument about the taxpayers funding a household's large consumer debt, but the legislature did not put exceptions into the MCCA for such debt, and there is nothing in the law requiring a

person to file bankruptcy to expunge such debt. Clearly petitioner's wife would undertake financial duress if she didn't pay her monthly bills, and that is the standard that I am reviewing. I do note that I reduced the total of her monthly bills some because there are some amounts that cannot be considered necessary, such as newspaper subscription and eating out, but the necessary charges are still high.

With my finding that necessary monthly expenses are \$4,530.68, I conclude that his wife's CSIA should be increased to \$4,530.68. I will order that change retroactive to July 1, 2016.

### **CONCLUSIONS OF LAW**

Petitioner's wife needs a CSIA of \$4,530.68 to avoid financial duress.

### **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 \$4,530.68, retroactive to July 1, 2016, 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, **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 13th day of September, 2016

\s \_\_\_\_\_  
Peter McCombs  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 13, 2016.

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