



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: MRA - 205971

PRELIMINARY RECITALS

Pursuant to a petition filed August 15, 2022, under Wis. Stat., § 49.455(8), to review a decision by Rock County Human Services regarding Medical Assistance (MA), a hearing was held on October 12, 2022, by telephone. Note that the three-letter code in the caption has been changed to MRA, which reflects that the issue concerning a spousal resource/income reallocation.

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]
[REDACTED]
[REDACTED]

Respondent:

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

By: Alisa McCalmont
Rock County Human Services
1900 Center Avenue
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. An application for MA was filed on petitioner's behalf in 2022. Petitioner was found to be eligible for community waivers MA effective September 1, 2022.
3. Petitioner's monthly income is \$4,846.94 from retirement accounts and social security. Petitioner's wife [REDACTED]'s income is \$3,858.22 from social security and retirement.
4. [REDACTED] community spouse income allowance was set at \$3,051.66, so her monthly income is higher than the allowance. Petitioner's monthly cost of care was set at \$2,165.84 after personal needs, special housing, and medical/remedial deductions.
5. [REDACTED] necessary monthly expenses total \$5,008 per month. Her expenses are high because of high credit card debt and costs of caring for her own elderly parents. She has a \$924 monthly mortgage, a \$619 monthly car payment, and a debt for home window replacement.

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 \$3,051.66. 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. An ALJ may augment the maximum allowance 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 \$3,051 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 have reviewed petitioner's list of expenses. While one would question the high credit card debt, the bills nevertheless are due and collection efforts could cause financial duress. Her assistance to her parents almost

certainly saves money to the state, so I am not going to nitpick those payments (which are small amount of the total). I conclude that the expenses are reasonable and that the community spouse income allowance should be raised.

CONCLUSIONS OF LAW

Petitioner's wife's monthly expenses to avoid financial duress total \$5,008.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to increase the monthly income allowance of petitioner's wife to \$5,008, retroactive to September 1, 2022, 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, 4822 Madison Yards Way, 5th Floor North, 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

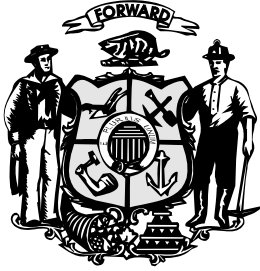
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 17th day of October, 2022


s _____

Brian 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 October 17, 2022.

Rock Cty Human Services
Division of Health Care Access and Accountability