



FH
[REDACTED]

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

In the Matter of

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

DECISION
Case #: MGE - 197217

PRELIMINARY RECITALS

Pursuant to a petition filed on December 12, 2019, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on March 17, 2020, by telephone.

The issue for determination is whether all or a portion of the petitioner's income should be allocated to the community spouse for spousal impoverishment purposes.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By:

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. Petitioner has resided in a nursing home beginning 3/19/19.
3. Petitioner in enrolled in long-term care Medicaid.
4. Petitioner's monthly income is \$1,916 in 2020 from SS.
5. Petitioner's community spouse has average monthly income of \$1,984 from SS and \$1,077.40 from a pension. This amounts to a gross monthly income of \$3,061.40.
6. Payment of the following monthly expenses are basic and necessary for the maintenance of the community spouse:

MORTGAGE (incl. condo fees)	884.00
HOME INS.	75.00
PROPERTY TAXES	371.00
HOME MAINTENANCE	50.00
HOME PHONE/INTERNET	10.00
ELECTRICITY & GAS	160.00
WATER/SEWER	40.00
FOOD	400.00
CAR INSURANCE	70.00
BURLINGTON PHARM CO-PAY	10.00
MEDICAL SUPPLIES	141.00
DENTAL/VISION INS.	50.00
WPS SUPP. HEALTH	332.00
PART D PREMIUM (for spouse)	40.00
PART B PREMIUM (for spouse)	145.00
CREDIT CARDS	825.00
FEDERAL TAX	200.00
TAX PREP FEES	10.00
HAIRCUTS	25.00
CAR LICENSING	15.00
CAR MAINTENANCE	25.00
FUEL	125.00
CLOTHING	25.00
ENTERTAINMENT	50.00

TOTAL **\$4,078**

7. The following expenses claimed by petitioner's community spouse at the hearing, or reflected in her documentary exhibits are not basic and necessary for her needs:
 - a. Cell phone
 - b. Life insurance payments
 - c. Any expenses for petitioner's needs
8. The current maximum income allocation to the community spouse is the maximum \$3,214.50/mo.

DISCUSSION

Spousal impoverishment is an MA policy, created pursuant to the Medicare Catastrophic Coverage Act of 1988, which allows persons to retain assets and income that are above the regular MA financial limits. Spousal impoverishment policy applies only to institutionalized persons and their community spouses.

After an institutionalized person is found eligible, he may allocate some of his income to the community spouse if the community spouse's gross monthly income does not exceed the Maximum Community Spouse Income Allocation (CSIA) of \$3,216. See *Medicaid Eligibility Handbook* § 18.6.2. In this case, the income of the community spouse is \$3,061 per month. That includes SS and pension.

The community spouse argues that she cannot get by on the \$3,216 CSIA for herself. The county agency does not have discretion to allocate income to her that would cause her “income plus allocation” total to exceed \$3,216. However, I have some limited discretion. The statute allows the allocation to be raised by an administrative law judge *to avert financial duress, created by exceptional circumstances*, for the community spouse. See Wis. Stat. § 49.455(8)(c). The Administrative Code explains that “‘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). The Medicaid Eligibility handbook explains that “A court or fair hearing can increase the community spouse income allocation if it determines the spouse is not able to provide for his or her necessary and basic maintenance needs with the amount allocated.” *MEH* at 18.6.2.

The spouse has claimed many expenses which are not basic and necessary for her maintenance. Life insurance for person without dependents is not necessary but an elective luxury. Cell phone, while convenient is similarly not basic or necessary when a land-line phone is available. I am allowing an excess of the credit card payments itemized by petitioner despite their being over the minimum payments as she should be allowed some means to pay off principal to avoid duress by avoiding the never-ending credit cycle. This will necessitate not using credit anymore. Future requests to increase the allocation based on additional incurred credit will likely be denied. I have modified some of petitioner’s claimed expenses to be more in line with basic necessity. I have also added in some expenses as assumed even though the community spouse did not itemize them or provide supporting documentation. These include car licensing, car maintenance, fuel, entertainment, and clothing.

The amounts set forth above ensure that the spouse does not become impoverished, that she has enough to eat and maintain a shelter, and then some. That is what the statute calls for. It does not call for her to maintain the same lifestyle that she has had in the past with the same material items.

Based on this, the new income allowance should be set at \$4,078. The allocation from petitioner to the community spouse should be increased to reach this income plus allocation number.

CONCLUSIONS OF LAW

Petitioner has established that an increase in the CSIA is necessary to avoid duress.

THEREFORE, it is **ORDERED**

That this matter is remanded to the agency with the following instructions:

1. The agency shall increase the community spouse’s income allocation to reach the amount of **\$4,078** effective as of the 3/9/19 institutional admission date.

These actions shall be completed within 10 days of the 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.

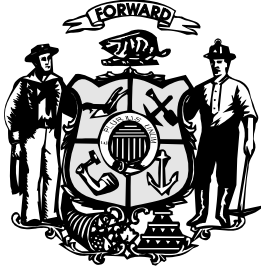
APPEAL TO COURT

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 21st day of May, 2020

\s _____
John P. Tedesco
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 May 21, 2020.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability