



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MGE - 207300

PRELIMINARY RECITALS

Pursuant to a petition filed on January 4, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services regarding Medical Assistance (MA), a hearing was held on February 14, 2023, by telephone.

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

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County. He is enrolled in nursing home-long term care. His wife remains in the community.
2. Petitioner's monthly income is \$2,297.90. Petitioner's wife has monthly income of \$4,735.08 from earned income. The agency found the Community Spouse Income Allocation Maximum is \$3,715.50. As her income exceeded that amount, none of petitioner's income was allocated to the wife. The result was that a monthly patient liability was imposed for petitioner's care of \$1,814.76, as of February 1, 2023. Exhibit 6.
3. At hearing, the wife provided copies of bills reflecting the following monthly expenses:
 - Cell phone: \$ 169.08
 - Life insurance: \$ 58.28
 - Rent: \$ 1,550.00
 - Water bill: \$186.24
 - Electricity/heat: \$184.00
 - Internet: \$ 59.99
 - Insurance: \$258.18

Total: \$ 2,465.77

Exhibit 7.
4. Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

At hearing, the petitioner's wife appeared. She did not contest the agency's calculation of her husband's patient liability. It was indicated that the petitioner and his wife were seeking to reduce his patient liability by allocating part of his income to her to cover, at least in part, the expenses reflected in Finding of Fact 3. It was indicated that this would allow the wife to maintain the same standard of living she had prior to her husband's placement in a long-term care facility.

Spousal impoverishment is an MA policy, 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. Wis. Stat. §49.455 sets forth the law regarding the protection of the community spouse's income and resources.

After an institutionalized person is found eligible, s/he may allocate some of their income to the community spouse if the community spouse's gross monthly income does not exceed the Maximum Community Spouse Income Allocation (CSIA) which is currently set at \$3,715.50. See Medicaid Eligibility Handbook § 18.6.2 (Release 23-01). 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 to cover the cost of care, also known as patient liability.

The issue for me is whether I can order any of petitioner's income to be allocated to his wife. The agency does not have discretion to allocate income to her that would cause her "income plus allocation" total to exceed the CSIA. As the wife's income exceeds that amount, the county agency was unable to allocate any amount of petitioner's income to the wife. However, I have some limited discretion. 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:

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

Wis. Stat. §49.455(8)(c) (emphasis added). An administrative law judge (ALJ) may increase the maximum income allocated to the community spouse only by amounts needed to alleviate financial duress, to allow the community spouse to meet necessary and basic maintenance needs. Also see, Medicaid Eligibility Handbook § 18.6.2.

The wife submitted a list of some of her monthly expenses. It is clear it is not a complete list of all her monthly expenses. My decision, however, is limited to the evidence in the record. The total amount of the monthly expenses reflected in the record is \$2,465.77. See Finding of Fact 3. Her monthly income (\$4,735.08) exceeds that amount by over \$2,000.00. Based on the evidence before me, I cannot order that income from the husband (the institutionalized spouse) be allocated to the wife (the community spouse) in this case it has not been shown by the petitioner that such is needed for the wife to avoid financial duress.

I would note that petitioner is free to file a new appeal requesting a review of the community spouse allocation at any point in the future. If such an appeal is filed, it would behoove the party appearing at the hearing to be prepaid to present a more complete list of expenses.

CONCLUSIONS OF LAW

Petitioner's wife has not shown a need to have her monthly community spouse income allotment increased from the amount determined by the county agency.

THEREFORE, it is **ORDERED**

That the petition for review is hereby 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, 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.

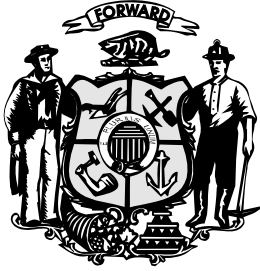
APPEAL TO COURT

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 28th day of February, 2023


vs _____
Jason M. Grace
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 February 28, 2023.

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