



FH  
[REDACTED]

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

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In the Matter of



**DECISION**  
Case #: MRA - 207266

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**PRELIMINARY RECITALS**

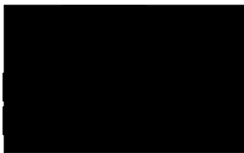
Pursuant to a petition filed on December 31, 2022, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Dane Cty. Dept. of Human Services regarding Medical Assistance (MA), a hearing was held on April 4, 2023, by telephone. A hearing scheduled for March 22, 2023, was rescheduled with the consent of petitioner's representative.

The issue for determination is whether petitioner's community spouse income allocation may be increased.

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]  
Dane Cty. Dept. of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**  
Jason M. Grace  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County. He is enrolled in nursing home long term care. His wife remains in the community.
2. Per a notice of November 14, 2022, petitioner's patient liability for Nursing Home Long-Term Care was \$5,576.06 as of December 1, 2022. A notice of December 5, 2022 indicated the petitioner's patient liability as of January 1, 2023, was \$5,949.56.
3. Petitioner's community spouse has gross monthly income of \$1,484.90 in Social Security benefits. Petitioner's monthly gross income is \$7,726.22. The agency allowed the petitioner to allocate up to \$1,566.76 of his income to his community spouse.
4. The community spouse's monthly necessary and basic maintenance expenses total \$4,155.98. This includes rent, food, utilities, car payment, car insurance, other monthly expenses associated with ownership of the vehicle, personal property and rental insurance, various forms of health insurance, storage rental, cable, cell phone, and life insurance. This does not include non-allowable monthly expenses totaling \$203.29, consisting of \$21.07 for Netflix, \$108.38 for Mepco, and \$73.84 for an unidentified expense.

## DISCUSSION

Medical Assistance rules require institutionalized persons to “apply their available income toward the cost of their care.” Wis. Admin. Code §DHS 103.07(1)(d). However, a married institutionalized Medical Assistance recipient may allocate income to his or her spouse who resides in the community to guard against that “community spouse” from falling into poverty. See Wis. Stat. §49.455; 42 U.S.C. §13964-5; and Medicaid Eligibility Manual (MEH) §§18.1 and 18.6. The agency may set a community spouse income allocation at an amount sufficient to raise the community spouse's total income up to an amount referred to as the minimum monthly maintenance needs allowance (MMMNA). Wis. Stat. §49.455(4)(b). The current MMMNA is \$3,051.66. See MEH §§18.6.2 and 39.4.4. If a community spouse demonstrates that s/he has “excess shelter costs”, the agency may increase the allocation to a maximum of \$3,715.50 Id

An administrative law judge (ALJ) has discretion beyond that of the agency to increase the MMMNA; though the ALJ's discretion to increase the MMMNA is not unfettered. 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). The relevant administrative code provision, in turn, provides the following definition of the term “exceptional circumstances resulting in financial duress”: “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 community spouse submitted a list of monthly expenses totaling \$4,359.27. Exhibit P-1; and Finding of Fact 4. All but three of the proffered expenses were found to be necessary and basic maintenance needs. The expense for Netflix of \$21.07 was not found to be a necessary and basic maintenance need as it was in addition to a cable expense that was already allowed. Also, two additional expenses were not allowed as the community spouse was not able to explain what they were for. Those were \$108.38 for Mepco and \$73.84 for an unidentified expense. The non-allowable expenses totaled \$203.29, reducing the allowable monthly expenses to \$4,155.98.

Petitioner's December, 2022, income less a \$45 personal needs allowance and \$164.90 health insurance premium comes to \$7,516.32. Because the community spouse has her own income of \$1,484.90, she requires an additional \$2,671.05 (\$4,155.98 - \$1,484.90) to cover her necessary and basic expenses. I will therefore remand this matter to the agency to increase the minimum monthly maintenance needs allowance to \$4,155.98 and the community spouse income allocation to \$2,671.05. Petitioner's patient liability effective December 1, 2022, will accordingly be reduced.

### CONCLUSIONS OF LAW

As of December 1, 2022, petitioner's community spouse had \$4,155.98 in basic and necessary monthly maintenance needs. Pursuant to Wis. Stat. §49.455(8)(c), she is therefore entitled to an increased minimum monthly maintenance needs allowance equal to that amount and an increased community spouse income allocation of \$2,671.05.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with the following instructions: (1) effective December 1, 2022, use \$4,155.98 as petitioner's minimum monthly maintenance needs allowance; (2) Adjust the community spouse income allocation to \$2,671.05; (3) Recalculate petitioner's patient liability effective December 1, 2022, by using this increased community spouse income allocation figure, and (4) Issue a notice to petitioner's representative with the adjusted figures. The agency shall comply with this order 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, 5<sup>th</sup> 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

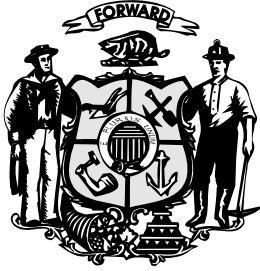
IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

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 27th day of April, 2023



\s \_\_\_\_\_  
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 April 27, 2023.

Dane Cty. Dept. of Human Services  
Division of Health Care Access and Accountability