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[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MGE - 207580

PRELIMINARY RECITALS

Pursuant to a petition filed on January 30, 2023, 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 15, 2023, by telephone.

The issues for determination are (1) whether the petitioner's appeal of the agency's patient liability determination is timely, and (2) whether the petitioner's husband is entitled to an increase in his 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]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ██████████) is a resident of Milwaukee County. She is enrolled in nursing home-long term care. Her husband lives in their community residence.
2. On September 19, 2022, an About Your Benefits notice was issued to petitioner. It indicated that her monthly patient liability for June 1, 2022 to August 31, 2022 was \$889.84, and decreased to \$862.84 as of September 1, 2022. The notice indicated she had until November 4, 2022, to file a request for Fair Hearing to contest the matter.
3. On December 5, 2022, an About Your Benefits notice was issued to petitioner. It indicated that her patient liability would increase to \$961.84/month as of January 1, 2023. The notice indicated she had until February 16, 2023 to file a request for Fair Hearing to contest the matter.
4. On January 30, 2023, the petitioner filed an appeal with the Division of Hearings and Appeals.
5. As of January 1, 2023, petitioner's (institutionalized spouse) monthly unearned income is \$1,198.74. Petitioner's husband (community spouse) has monthly gross income of \$906.97 in pension and \$2,358.90 in social security, totaling \$3,265.87.
6. The agency determined petitioner's patient liability by taking her unearned income of \$1,198.74 and reducing that by a personal needs allowance (\$45.00) and health insurance premiums (\$191.90), resulting in a monthly patient liability of \$961.84, as of January 1, 2023.
7. At hearing, the agency's representative indicated that petitioner's patient liability as of February, 2023 was \$0.00.
8. The husband has the following monthly expenses:
 - Mortgage: \$517.39
 - Property taxes: \$113.63
 - Auto loan: \$429.44
 - Auto insurance: \$125.75
 - Life insurance: \$397.46
 - Gas and electric: \$204.00
 - Cable: \$157.04
 - Phone: \$107.42
 - Part B medical premium: \$164.90
 - Food and gasoline: \$400.00
 - Total: \$ 2,617.03
9. The husband presented a medical bill for himself totaling \$635.00. A monthly payment plan had not been established.
10. The husband also provided a medical bill for his wife of \$1,750.29, with a monthly payment plan of \$100.00.

DISCUSSION

If a request for a hearing is not received within that the appeal period set forth, the Division of Hearings

and Appeals must dismiss the hearing request. Wis. Admin. Code §HA 3.05(4)(e). Here, Petitioner seeks to appeal the agency's patient liability determination all the way back to June 1, 2022. However, a notice was issued September 19, 2022 regarding the patient liability as of June, 2022, with an appeal deadline of November 4, 2022 (i.e., 45 days from the effective date of the notice). Even if the deadline were deemed to be 90 days from the date of the notice, the deadline to appeal would have been December 19, 2022. Petitioner did not file his appeal until January 30, 2023, approximately a month after the deadline. Because petitioner did not file an appeal regarding her patient liability until after the deadline, her appeal as to that determination prior to January 1, 2023, must be dismissed pursuant to Wis. Admin. Code §HA 3.05(4)(e).

However, on December 5, 2022, the agency issued a notice as to an increase in patient liability as of January 1, 2023. The appeal deadline to contest that determination was indicated to be February 16, 2023. Petitioner's appeal was timely filed as to the January 1, 2023 patient liability determination. As such, I have the authority to address the patient liability as of January 1, 2023.

After an institutionalized person is determined eligible for MA, a county agency must calculate the amount of income the institutionalized person must contribute to defray the cost of care incurred by MA on his or her behalf on a monthly basis. This is referred to as the person's "patient liability." The calculation begins with gross income, and only a few items may be subtracted as deductions. These include the statutory \$45 personal needs allowance deduction, a health insurance expense deduction and, in some cases, a home maintenance deduction. Wis. Admin. Code §DHS 103.07(1)(d), and the federal rule at 42 C.F.R. §435.725 - .832. The formula for calculating the patient liability amount is set out at Medicaid Eligibility Handbook (MEH), §27.7.1, found online at http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm#t=policy_files%2F27%2F27.7.htm.

Calculate the cost of care in the following way:

1. For a Medicaid member in a medical institution who does not have a community spouse, subtract the following from the person's monthly income:
 - a. \$65 and ½ earned income disregard (see SECTION 15.7.5 \$65 AND ½ EARNED INCOME DEDUCTION).
 - b. Monthly cost for health insurance (see SECTION 27.6.4 HEALTH INSURANCE).
 - c. Support payments (see SECTION 15.7.2.1 SUPPORT PAYMENTS).
 - d. Personal needs allowance (see SECTION 39.4 ELDERLY, BLIND, OR DISABLED ASSETS AND INCOME TABLES).
 - e. Home maintenance costs, if applicable (see SECTION 15.7.1 MAINTAINING HOME OR APARTMENT).
 - f. Expenses for establishing and maintaining a court-ordered guardianship or protective placement, including court-ordered attorney and/or guardian fees (see SECTION 27.6.6 FEES TO GUARDIANS OR ATTORNEYS).
 - g. Medical or remedial expenses (see SECTION 27.7.7 MEDICAL OR REMEDIAL EXPENSES AND PAYMENTS FOR NONCOVERED SERVICES).

2. For a Medicaid member in a medical institution who has a community spouse, follow the directions in SECTION 18.6 SPOUSAL IMPOVERISHMENT INCOME ALLOCATION.
3. For a community waivers member with or without a community spouse, follow the directions in SECTION 28.6.4 COST SHARE AMOUNT.
4. There is no cost of care for SSI recipients.
5. For a Medicaid member who was or could have been certified through a deductible before entering the institution, there is no cost of care until the deductible period ends.

...

If the cost of care amount is equal to or more than the medical institution's Medicaid rate, the individual is responsible for the entire cost of his or her institutional care. He or she would be entitled to keep any overage without restriction. He or she would remain eligible for the Medicaid program and have no further financial obligation to the Medicaid program for that month.

MEH §27.7.1.

The petitioner does not have earned income, and thus is not entitled to an earned income disregard. See, MEH §15.4 and 15.5 (for what qualifies as earned and unearned income). She also did not qualify for the home maintenance costs reduction as she has a community spouse living in their residence. See, MEH §15.7.1. The record also does not contain any expenses associated with establishing or maintaining a court-ordered guardianship or protective placement. The agency did, however, applied deductions for a personal allowance and health insurance premiums (my understanding was the premiums were for Part B and Part D premiums). No other health expenses were provided to the agency.

At hearing, the agency representative indicated that petitioner's patient liability would be \$0.00 as of February 1, 2023. Thus, the only month of patient liability at issue is January, 2023. The petitioner and her husband did not contest the agency's calculation of the patient liability. Instead, they were seeking an increase in the community spouse's monthly income allocation on grounds of financial duress of the community spouse.

While it was not contested by the petitioner, I am remanding this matter back to the agency to redetermine petitioner's patient liability due to a medical bill provided to DHA shortly before the hearing. The petitioner has established a monthly repayment plan of \$100.00 for medical expenses from [REDACTED], which do not appear to have been previously disclosed to the agency. The bill is included with this decision for the agency's review. The date of service is not reflected in the bill but the statement date is January 3, 2023.

Moving on to the next issue, 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 and Medicaid Eligibility Manual (MEH) §§18.1 and 18.6. The institutionalized spouse may allocate some of his/her income to the community spouse if the community spouse's gross monthly income does not exceed the Maximum Community Spouse Income Allocation (MCSIA), which is the lesser of \$3,051.66 plus excess shelter allowance up to a maximum of \$3,715.50. See MA Eligibility Handbook (MEH), §18.6.2 and 39.4.4. In this case, the agency did not provide any evidence an income allocation calculation was conducted. Based on the record before me, the husband's allowable shelter expenses amounted to \$1,102.02, comprised of \$517.39 mortgage, \$113.63 property

taxes, and \$471.00 HSUA standard utility allowance. See, MEH 18.6.2. The excess shelter allowance was the difference between the shelter expense (\$1,102.02) and the shelter base amount (\$915.50), amounting to \$186.52. See, MEH §§ 18.6.2. and 39.4.4. The next step is to determine the sum of the Community spouse Lower Income Allocation Limit (\$3,051.66) and the excess shelter allowance (\$186.52), which amounts to \$3,238.18. See, MEH § 18.6. Last, is to take the lesser of that amount (\$3,238.18) and the Community Spouse Income Allocation Maximum, which is currently set at \$3,715.50. Id. The lesser amount is \$3,238.18. As the husband's gross income (\$3,265.87) exceeded that amount, no allocation from the wife to the husband was able to be authorized by the agency.

The issue for me is whether I can order any of petitioner's income to be allocated to her husband. 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 husband submitted a list of some of his monthly expenses. See Findings of Fact 8 and 9 above. While petitioner and her husband did not address their property taxes, I applied the amount reflected in the September 19, 2022 notice that was introduced in the record. While the expenses were to meet necessary and basic needs, I did not closely scrutinize the cable bill. The result was that the total monthly expenses amounted to \$ 2,617.03. The lone expense not included was a medical bill connected to the husband. A monthly repayment plan had not been established, but the petitioner also had a medical bill from the same hospital and was able to establish a repayment plan of \$100.00/month. If a similar repayment plan for the husband's medical bill was established, this would increase his monthly expenses to \$2,717.03. His income exceeds his expenses by over \$500.00.

Based on the evidence before me, I cannot order that income from the wife (the institutionalized spouse) be allocated to the husband (the community spouse) in this case it has not been shown that such is needed for the husband 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

1. Petitioner's appeal of the agency's determination of his patient liability for June, 2022 through December, 2022 was untimely.

2. Petitioner's appeal of the agency's January 1, 2023 patient liability determination was timely.
3. Based on a new medical bill provided shortly before the hearing, the agency's patient liability determination as of at least January 1, 2023 was not correct.
4. The record does not establish that the petitioner's community spouse needs to have his monthly community spouse income allotment increased to avoid financial duress.

THEREFORE, it is

ORDERED

That the matter be remanded to the county agency with instructions to redetermine petitioner's monthly patient liability, with consideration provided to the \$100.00/month medical bill from [REDACTED] (which is included with this decision), and to change the monthly patient liability accordingly. The county agency shall take all necessary steps to complete 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

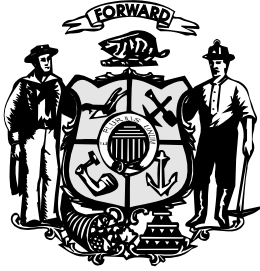
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 14th 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 14, 2023.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability