



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MRA - 208459

PRELIMINARY RECITALS

Pursuant to a petition filed April 27, 2023, under Wis. Stat. § 49.45(5), to review a decision by the Juneau County Dept. of Human Services regarding Medical Assistance (MA), a hearing was held on June 21, 2023, by telephone.

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

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Atty. Amanda Grady
Greater Wisconsin Agency on Aging Resources, Inc.
Elder Law & Advocacy Center
1414 MacArthur Rd Suite 306
Madison, WI 53714

Respondent:

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

By: Cindy Ravenscroft
Juneau County Dept. of Human Services
200 Hickory Street
Mauston, WI 53948

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Adams County.
2. An application for institutional MA was filed on petitioner's behalf in February, 2023, seeking eligibility back to November 1, 2022.
3. Petitioner has monthly gross income of \$3,748.95 from social security and a pension. Petitioner's wife, who remains in the community, has monthly income of \$5,743.59, from a salary, social security, and a pension.
4. The county set the community spouse monthly income allowance at the maximum \$3,715.50. Because her income was higher than that amount, none of petitioner's income was allocated to her. His monthly patient liability was set at \$3,408.05 after deductions for the \$45 personal needs allowance and a health insurance premium.
5. Petitioner's wife's necessary monthly expenses total \$7,203.19. Monthly housing expenses alone are approximately \$3,500 per month including a \$2,007 mortgage payment and property taxes prorated to be \$796 monthly. Petitioner's wife also has out-of-pocket medical expenses, vehicle expenses, \$480 monthly credit card payments, and \$750 monthly in back tax payments.

DISCUSSION

As a first point, just prior to the hearing, petitioner's attorney submitted some out-of-pocket medical transportation bills incurred by petitioner in the months of November, 2022 through February, 2023. She asked that I count those bills as remedial expenses to reduce his monthly patient liability for those months. At the hearing Ms. Ravenscroft stated that the county had not reviewed the bills yet. Because the county had not acted on them, the issue is not ripe for review. The Division of Hearings and Appeals hears appeals of negative actions taken by the county agency. If the county denies petitioner's request to budget those bills as remedial expenses, petitioner can file a new appeal so the issue can be dealt with appropriately.

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. The allowance set by the county in this case is \$3,715.50. 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. Thus 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 \$3,715.50 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. Of course, in this instance petitioner's wife's income already is substantially higher than the income allowance set by law, so I would have to find that her expenses exceed her monthly income to order the increase of the income allowance.

I have reviewed the monthly expenses provided by petitioner's wife and find them to be reasonable. If anything, they are low considering the inflation of food prices. I thus will order that the community spouse income allowance be set at \$7,203.19, meaning that \$1,459.60 of petitioner's income will be allocated to his spouse, with a corresponding reduction in his monthly cost of care.

CONCLUSIONS OF LAW

1. The issue of backdating the cost of care calculations to account for remedial expenses paid prior to eligibility is not ripe for review because the issue was not raised in the hearing request and the agency representative had not made a determination on the issue at the time of the hearing.
2. Petitioner's wife's monthly expenses to avoid financial duress total \$7,203.19.

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 \$7,203.19, retroactive to November 1, 2022, and to change the monthly patient liability by allocating \$1,459 of petitioner's monthly income to his spouse. 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

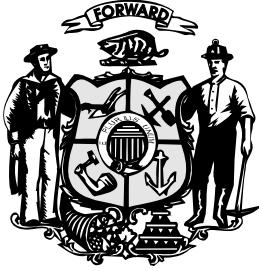
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 29th day of June, 2023


vs _____

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 June 29, 2023.

Juneau County Department of Human Services
Division of Health Care Access and Accountability
Attorney Amanda Grady