



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MGE - 209995

PRELIMINARY RECITALS

Pursuant to a petition filed on August 21, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services regarding Medical Assistance (MA), a hearing was held on October 25, 2023, by telephone. Hearings scheduled for September 27, 2023 and October 11, 2023, were rescheduled at petitioner's request.

The issue for determination is whether the respondent agency correctly determined petitioner's patient liability and spousal allocation effective July 1, 2023.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Shelly Quick
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner was diagnosed with Huntington's Disease in 2014, and has been a recipient of Social Security disability benefits since that time. Petitioner presently resides at [REDACTED]; his wife, [REDACTED], has continued to reside in the community.
3. [REDACTED] is contractually employed by the [REDACTED] and [REDACTED]. Her pay at the [REDACTED] is [REDACTED], and she works 28.75 hours per week, roughly September through June. Her pay at [REDACTED] is 16.00/hour and she averages 19.47 hours per week; in addition, she earns an additional \$3.00/hour for an average of 6.17 hours per week. [REDACTED]'s total monthly income is \$1,320.12. [REDACTED] also has [REDACTED] in the amount of \$134.44/month. Her total earned income plus her [REDACTED] is \$1,454.56.
4. Petitioner's correct patient liability for the month of August, 2023 is \$2,832.56.
5. As of August 2023, [REDACTED] had the following expenses that would impact her community spouse income allocation:
 - [REDACTED]: \$450.00/month
 - [REDACTED]: \$120.52/month
 - [REDACTED]: \$200.00/month
 - [REDACTED]: \$300.00/month
 - [REDACTED]: \$100.00/month
 - [REDACTED]: \$281.00 in November and December
 - [REDACTED]: \$90.81 in November
6. As of August 31, 2023, [REDACTED]'s income was \$1,620.12, and her correct spousal allocation was \$1,666.54.
7. On October 17, 2023, [REDACTED] submitted requested verifications identifying the following earned income for September 2023: [REDACTED] – 9/15/2023 single in-service day: \$47.00; 9/29/2023 paycheck for 56.75 hours at \$ [REDACTED] for a total of \$1,128.19; [REDACTED] earned income of \$1,155.80.
8. [REDACTED] never received income from [REDACTED], [REDACTED], [REDACTED].
9. [REDACTED]'s correct spousal allocation for September 2023, is \$1,832.10.
10. Petitioner's correct September and October 2023 patient liabilities are \$2,501.44 each month.

DISCUSSION

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). He also would not qualify for the home maintenance costs reduction as he 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 petitioner established as appropriate deductions for a personal allowance and health insurance premiums.

Petitioner established at hearing that his patient liability for the month of August should have been correctly calculated as \$2,832.56, and that the patient liability should have been correctly calculated as \$2,501.44 for September 2023 and October 2023. I am remanding this matter back to the agency to re-establish petitioner's patient liability beginning in August 2023, in accord with the Findings of Fact, above.

Moving on to the next issue, a married institutionalized Medical Assistance recipient may allocate income to his 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 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 of how it budgeted ■■■'s income allocation calculation. Based on the record before me, I find that the petitioner has established that, as of August 31, 2023, ■■■'s income was \$1,620.12, and her correct spousal allocation was \$1,666.54. For September 2023, ■■■ submitted requested verifications identifying the following earned income: ■■■ – 9/15/2023 single in-service day: \$47.00; 9/29/2023 paycheck for 56.75 hours at \$■■■■ for a total of \$1,128.19; and ■■■ earned income of \$1,155.80. ■■■'s correct spousal allocation for September 2023, is \$1,832.10. This matter will be remanded to the agency to correct the August and September 2023 allocations as indicated, and to redetermine the spousal allocations for October forward, based upon the Findings of Fact, above.

I note that, because any additional amount given to the community spouse is a taxpayer-financed subsidy in the form of medical assistance, the law restricts an administrative law judge's ability to raise the spousal allocation 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.

■■■ submitted a list of some of her monthly expenses. See Finding of Fact 5, above. Based on ■■■'s credible testimony, I find that the listed expenses were to meet necessary and basic needs. The petitioner has established that the allocation as determined hereinabove is necessary for ■■■ to avoid financial duress.

CONCLUSIONS OF LAW

1. Based upon petitioner’s testimony and exhibits submitted at hearing, the agency’s patient liability determination as of August 2023, was not correct.
2. Based upon petitioner’s testimony and exhibits submitted at hearing, the petitioner’s community spouse needs to have her 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 and the spousal allocation for the months of August to the present, in accord with the Findings of Fact and Discussion, above. The county agency shall take all necessary steps to complete these actions within 10 days following 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

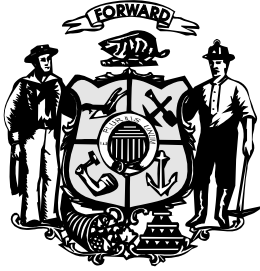
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision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

A handwritten signature in blue ink, appearing to read 'Peter McCombs', written over a horizontal line.

\s _____
Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705-5400

Telephone: (608) 266-7709
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 1, 2023.

Brown County Human Services
Division of Health Care Access and Accountability