



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MGE - 210600

PRELIMINARY RECITALS

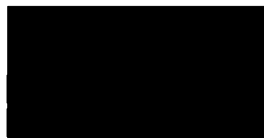
Pursuant to a petition filed on October 6, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on November 2, 2023, by telephone.

The issue for determination is whether Petitioner's spouse, [REDACTED], is entitled to continue receiving an increased spousal income allocation from her institutionalized spouse to meet her necessary and basic maintenance needs.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Attorney Annie Gonring
633 West Wisconsin Ave. Suite 2000
Milwaukee, WI 53203

Respondent:

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

By: Princeton Perry
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a married resident of Milwaukee County who has been enrolled in long-term care Medicaid since 2019. He resides in a nursing home and his spouse resides in the community (hereafter referred to as “community spouse”).
2. In December 2019, Petitioner and his spouse filed a request for a fair hearing to appeal the standard community spouse income allocation (CSIA) determined by the agency.
3. On May 21, 2020, Administrative Law Judge John Tedesco ordered that the CSIA be increased to an amount sufficient to increase the community spouse’s income to \$4,078. **The agency however increased the CSIA to \$4,078 in apparent misunderstanding of the order. This caused Petitioner’s patient liability to be reduced to \$0.**
4. Since May 2020, the community spouse has used the increased CSIA, in part, to reduce a \$30,000 credit card debt to \$20,000. She continues to pay down that debt.
5. Effective July 2023, the agency concluded that the 2020 fair hearing decision no longer applied, increased Petitioner’s patient liability to \$1,632.64, and decreased the CSIA to \$140.02.
6. The community spouse’s current expenses include:
 - \$973.40 mortgage
 - \$104.41 homeowner’s insurance
 - \$397.04 property taxes
 - \$120 home maintenance
 - \$20 home phone
 - \$160 electricity and gas
 - \$40 water / sewer
 - \$500 groceries
 - \$61 car insurance (increase to \$71 as of October 29, 2023)
 - \$30 drug copays
 - \$368 medical supplies / care
 - \$400 WPS supplemental health insurance
 - \$40 Part D premium
 - \$42 Part D plan deductible
 - \$165 Part B premium
 - \$825 credit card payments
 - \$15.00 tax preparation fees
 - \$35 haircut
 - \$15 car licensing
 - \$66 car maintenance
 - \$50 gas for car

- \$60 clothing
- \$110 entertainment

These expenses total \$4,596.85.

7. Petitioner's gross monthly income includes a \$2,317 Social Security benefit and a \$1,093.58 pension payment. Her total monthly income is therefore \$3,410.58.
8. Petitioner receives a gross Social Security benefit of \$2,238 per month. He receives no other income in his own name.
9. Petitioner requires a \$1,186.27 CSIA from July 2023 through September 2023 and a \$1,196.27 CSIA as of October 2023 to meet the expenses itemized in Finding of Fact No. 6.

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 their 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 \$3,286.66. See *MEH §39.4.4 and 18.6.2*. 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.*

In this case, the community spouse has \$3,410.58 per month of income in her own name and significant excess shelter costs. And, the agency correctly set the community spouse income allocation at \$140.02 to increase her income to the \$3,715.50 maximum MMMNA. The agency has no discretion to increase that amount further.

An administrative law judge (ALJ) has discretion beyond that of the agency to increase the MMMNA though the ALJ's discretion is not unfettered. The relevant statute provides the following standard:

(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). 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).

Here, Petitioner's spouse demonstrated that she has the expenses identified in Finding of Fact No. 6 above. Those expenses totaled \$4,596.85 from July 2023 through September 2023 and increased to \$4,606.85 as of October 2023. I have reviewed the community spouse's monthly expenses, the documentation provided, and her credible testimony and find that all of the community spouse's identified expenses constitute necessary and basic maintenance needs.

Because the community spouse has \$3,410.58 of income in her own name, she requires an additional \$1,186.27 from July 2023 through September 2023 and \$1,286.27 as of October 2023 to cover those expenses. I will therefore remand this matter to the agency to increase the community spouse's income allocation accordingly and to adjust Petitioner's patient liability.

I note that because Petitioner has income remaining after subtracting a personal needs allowance, his health insurance premium, and the CSIA identified above, he will begin to incur a patient liability as of July 2023 in the approximate amount of \$421.49 and, as of October 2023, an approximate amount of \$411.49.

This decision does not preclude the agency from reviewing the CSIA at the time of Petitioner's annual renewal.

CONCLUSIONS OF LAW

Petitioner's community spouse has \$4,596.85 in basic and necessary monthly maintenance needs as of July 2023. That amount increased to \$4,606.84 in October 2023. Pursuant to Wis. Stat. §49.455(8)(c), she is therefore entitled to an increased community spouse income allocation of \$1,186.75 as of July 2023 and of \$1,196.75 as of October 2023.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with the following instructions: (1) For the months of July 2023 through September 2023, allow Petitioner to allocate \$1,186.75 to his community spouse and as of October 2023, allow him to allocate \$1,286.75 to her, and (2) Recalculate Petitioner's patient liability by using this increased community spouse income allocation figures, and (3) 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, 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.

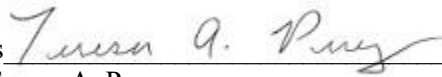
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

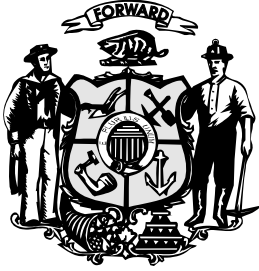
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 22nd day of December, 2023

 vs _____

Teresa A. Perez
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 December 22, 2023.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability
Attorney Annie Gonring