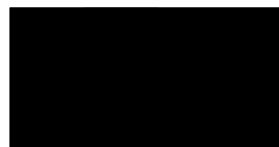




FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: MRA - 211198

PRELIMINARY RECITALS

Pursuant to a petition filed on November 22, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Brown County Human Services regarding Medical Assistance (MA), a hearing was held on March 1, 2024, by telephone. Post hearing, the record was held open to allow petitioner an opportunity to provide additional documentation. This documentation was subsequently received and added to the petitioner's exhibits.

The issue for determination is whether all or a portion of the petitioner's income should be allocated to the community spouse for spousal impoverishment purposes

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: Becky Salentine
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. He is enrolled in Elderly, Blind, Disabled (EBD) MA. He currently resides in a nursing home facility.
2. Petitioner’s spouse, [REDACTED] has been diagnosed with Alzheimer’s disease, and presently resides in the family home. She receives two hours of daily in-home care, Monday-Friday, provided by [REDACTED]. [REDACTED] charges \$26.50 hourly for the services provided to [REDACTED].
3. Petitioner has monthly income from Social Security and a pension totaling \$4,281.90.
4. [REDACTED] has monthly income from Social Security, in the amount of \$1,017.90.
5. The agency determined petitioner’s patient liability of \$1,704.24, effective August 1, 2023.
6. Payment of the following monthly expenses are basic and necessary for the maintenance of the community spouse:

IN-HOME CAREGIVING	\$230.00
INSURANCE	\$500.00
MORTGAGE	\$259.14
PROPERTY TAXES	\$111.32
HOME AND PERSONAL MAINTENANCE	\$600.00
TELEPHONE/CABLE/INTERNET	\$285.00
UTILITY ALLOWANCE	\$471.00
FOOD	\$650.00
MEDICAL/RX	\$500.00
CAR PAYMENTS	\$150.00
CLOTHING	\$300.00
TRANSPORTATION	\$200.00
TOTAL	\$4,256.46

7. The current income allocation to the community spouse is \$3,286.66/month.

DISCUSSION

Spousal impoverishment is an MA policy, created pursuant to the Medicare Catastrophic Coverage Act of 1988, which allows persons to retain assets and income that are above the regular MA financial limits. Spousal impoverishment policy applies only to institutionalized persons and their community spouses.

After an institutionalized person is found eligible, he may allocate some of his income to the community spouse if the community spouse's gross monthly income does not exceed the Community Spouse Income Allocation (CSIA) of 3,286.66. See *Medicaid Eligibility Handbook* § 18.6.2. In this case, the income of the community spouse is \$1,017.90 per month.

The petitioner’s son argued at hearing that his mother, the petitioner’s community spouse, cannot get by on the 3,286.66 CSIA for herself. The county agency does not have discretion to allocate income to her that would cause her “income plus allocation” total to exceed that amount. However, I have some limited discretion. The statute allows the allocation to be raised by an administrative law judge *to avert financial duress, created by exceptional circumstances*, for the community spouse. See Wis. Stat. § 49.455(8)(c). The Administrative Code explains that “‘exceptional circumstances resulting in financial duress’ means 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 Medicaid Eligibility handbook explains that “[a] court or fair hearing can increase the community spouse income allocation if it determines the spouse is not able to provide for his or her necessary and basic maintenance needs with the amount allocated.” *MEH* at 18.6.2.

The spouse in this case is in an unusual circumstance. While not institutionalized, she has been diagnosed with Alzheimer’s disease and presently pays for in-home assistance two hours daily, Monday through Friday. This was an unexpected obligation she incurred, and continues to incur, which exacerbates her financial situation considering her husband’s enrollment in EBD MA. She has a certain standard of living to which she is accustomed. It is concerning that her inevitable disease progression and a reduction in caregiving would likely result in her institutionalization. Such major changes to the spouse’s situation are exactly what the spousal impoverishment rules are designed to avoid.

None of the expenses set out by petitioner’s representatives are luxuries or otherwise extravagant. The amounts set forth AT Finding of Fact, paragraph six, above, ensure that the spouse does not become impoverished, that she has enough to eat and maintain a shelter, and sufficient funds to receive reasonable and necessary care to remain in the community. That is what the statute calls for. Petitioner is cautioned that a spousal allocation determination, and the documentation supporting that determination, may need to be addressed at least annually. As such, he is encouraged to maintain any and all documentation to verify his spouse’s costs, and be prepared to share that with the agency.

Based on the record before me, I conclude that the new income allowance should be set at \$4,256.46. The allocation from petitioner to the community spouse should be increased to reach this income plus allocation number. I am setting this as the allocation back to the date of petitioner’s enrollment in EBD MA.

CONCLUSIONS OF LAW

Petitioner has established that an increase in the CSIA is necessary to avoid duress.

THEREFORE, it is **ORDERED**

That this matter is remanded to the agency with the following instructions:

1. The agency shall increase the community spouse’s income allocation to reach the amount of \$4,256.46, effective as of the petitioner’s EBD MA enrollment date.
2. The agency shall redetermine petitioner’s patient liability to include the spousal income allocation of \$4,256.46, effective as of the date that petitioner’s patient liability was first assessed.

These actions shall be completed within 10 days of the 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

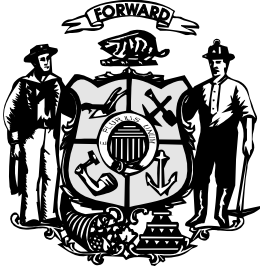
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 28th day of March, 2024



\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 March 28, 2024.

Brown County Human Services
Division of Health Care Access and Accountability