



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

Case #: MRA - 215653

PRELIMINARY RECITALS

Pursuant to a petition filed on October 24, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Racine County Department of Human Services regarding Medical Assistance (MA), a hearing was held on December 3, 2024, by telephone.

The issue for determination is whether petitioner's community spouse income allocation can be increased.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Melissa Ridgway
Demark, Kolbe & Brodek
7418 Washington Avenue
Racine, WI 53406

Respondent:

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

By: Renee MacDonald, Lead ESS
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County and is institutionalized for MA purposes. Her spouse has remained in the community.

2. On October 18, 2024, the agency issued written notice to the petitioner advising that she would have to contribute \$1186.65 toward her MA care expenses (patient liability). The agency allowed a community spouse income allocation of \$1169.96.
3. Petitioner's community spouse has a gross monthly income of \$2062 in Social Security benefits. Petitioner's monthly gross income is \$1538 in Social Security benefits and \$1806.39 in retirement benefits.
4. Petitioner's community spouse's allowable monthly expenses total \$3,065.48 per 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. Wis. Stat., § 49.455 sets forth the law regarding the protection of the community spouse's income and resources.

After an institutionalized person is found eligible, s/he 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 \$3,406.66 plus excess shelter allowance up to a maximum of \$3,853.50. See *MA Eligibility Handbook (MEH)*, § 18.6.2, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. In this case, the agency allocated \$1169.96 to the community spouse. The agency also gave the personal needs deduction, a health insurance deduction, and a special exempt income deduction to determine petitioner's patient liability.

The community spouse maintains that he cannot get by on his income and allocation alone. The agency does not have discretion to allocate income to him that would cause his "income plus allocation" total to exceed the MCSIA. However, I have some limited discretion and have determined that his income is short of what he needs to cover basic living expenses. The statute allows the allocation to be raised to avert financial duress, created by exceptional circumstances, for the community spouse. See Wis. Stat., § 49.455(8)(c). The acceptable monthly expenses for the community spouse are as follows:

Mortgage	\$1,520
Condo Association Dues	\$490.00
Phone	\$266.43
Insurance (car)	\$200.33
Pond Association Dues	\$39.58
Utilities	\$549.14
TOTAL:	\$3,065.48

Based on the foregoing, I will order that the community spouse income allowance be raised to \$3,065.48 per month, and the agency shall then change petitioner's monthly patient liability based upon the new allowance.

CONCLUSIONS OF LAW

Due to exceptional circumstances, the petitioner's community spouse requires a \$3,065.48 Maximum Community Spouse Income Allocation effective October 1, 2024.

THEREFORE, it is

ORDERED

That the petition for review herein be remanded to the agency with instructions to increase petitioner's community spouse's Maximum Community Spouse Income Allocation to \$3,065.48 effective October 1, 2024, to change the monthly patient liability accordingly, and to issue a notice of decision regarding same. This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition is dismissed.

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.

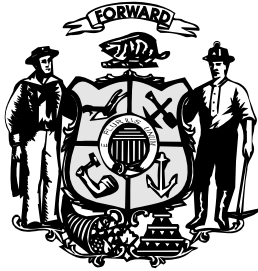
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 20th day of December, 2024

\s_____
Kelly Cochrane
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 20, 2024.

Racine County Department of Human Services
Division of Health Care Access and Accountability