



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

DECISION

MRA/145788

PRELIMINARY RECITALS

Pursuant to a petition filed December 06, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on April 02, 2013, at Waukesha, Wisconsin.

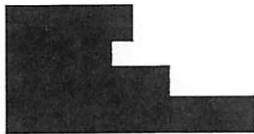
NOTE: The record was held open until Friday, April 5, 2012, at the request of Petitioner's wife, to give her an opportunity to submit a list of her expenses. The record was also held open to give the agency an opportunity to submit Data Exchange Information concerning Social Security income received by Petitioner's children. The Data Exchange Information has been marked as Exhibit 6 and entered into the record. Petitioner's bills have been marked collectively as Exhibit 7 and entered into the record.

The issue for determination is whether Waukesha County Health and Human Services correctly determined Petitioner's cost share.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Lori Rutzinski, Economic Support Specialist
Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

*Spousal impoverishment
income allocation*

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner resides in a nursing home and received medical assistance from the Nursing Home Long-Term Care program. (Exhibit 3)
3. On November 12, 2012, the agency sent Petitioner a notice indicating that effective December 1, 2012, his monthly cost would be increasing to \$390.00 per month. (Exhibit 3)
4. Petitioner's wife lives at home with their three children, two minors and one 18 year-old adult. Petitioner's wife is still responsible for the living expenses of the 18 year-old child. (Testimony of Petitioner's wife; Exhibit 1)
5. Petitioner's two minor children each receive \$299.00 per month in social security income (Exhibits 3 and 6).
6. Petitioner's wife filed a request for fair hearing on his behalf that was received by the Division of Hearings and Appeals on December 7, 2012.
7. Petitioner receives \$1098.00 per month in Social Security Income. (Exhibit 3; Testimony of Petitioner's wife)
8. Petitioner's wife earns approximately \$1853.32 every other week, which results in monthly income of \$3,706 [$\1853.32×2]. (Id.)

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)*. Cost of care is the amount s/he will pay each month to partially offset the cost of his/her Medicaid services. The cost of care is referred to as a patient liability amount when applied to a resident of a medical institution. *Medicaid Eligibility Manual (MEH)*, §27.7.1

The cost of care is calculated by taking the institutionalized person's gross income and deducting the following amounts, if they apply:

1. Personal Needs Allowance
2. Community Spouse Income Allocation
3. Dependent Family Member Allocation
4. Court Ordered Guardian or Attorney Fees or Special Exempt Income
5. Medical/Remedial Cost and Cost of Person's Health Insurance Premiums

MEH §27.7.1 and §18.6.1

Petitioner's wife filed an appeal, contesting the agency's calculation of the cost of care/patient liability. There are two deductions with which Petitioner seemed to be concerned, the Community Spouse Income Allocation and the Dependent Family Member Allocation.

Community Spouse Income Allocation

State and federal medical assistance laws contain provisions that allow an institutionalized person to allocate some of his income to his spouse so that she does not fall into poverty. *See Wis. Stat. § 49.455 and 42 U.S.C. § 13964-5; also see MEH §§18.1 and 18.6.1*. This is called a Community Spouse Income Allocation or CSIA. (Id.)

Generally speaking, the Community Spouse Income Allocation is calculated by taking the Minimum Monthly Maintenance Needs Allowance (MMMNA) and subtracting from that amount, the Community Spouse's gross monthly income. *MEH §§18.1 and 18.6.1*.

The MMMNA currently is the lesser of \$2,841 or \$2,521.67 plus excess shelter costs. MEH § 18.6.2. Excess shelter costs are shelter costs above \$756.50. *Id.* Administrative law judges (ALJs) have the authority to increase the CSIA above the MMMNA when the MMMNA is insufficient to meet a particular community spouse's basic maintenance needs and when there exist "exceptional circumstances resulting in financial duress" for the community spouse. *Wis. Stat. §49.455(8)(c); Wis. Admin. Code §DHS 103.075(8)(c); MEH §18.6.* "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); emphasis added.*

In Petitioner's case, the MMMNA is \$2,841, because \$2,841 is less than \$2,521.67 + excess shelter costs:

Petitioner's shelter costs are:

\$671.25 mortgage
+ \$57.41 per month for insurance
+ \$442 Standard Utility Allowance under the FoodShare program
<hr/>
\$1170.66

Thus, Petitioner's excess shelter costs are:

\$1170.66
-\$756.50
<hr/>
\$414.16

$\$2,521.67 + \$414.16 \text{ excess shelter cost} = 2,935.83 > \$2,841$

Petitioner's spouse essentially asked that her expenses be examined and that the CSIA be increased above the \$2,841 MMMNA. She submitted documentation of the following expenses:

1. WE Energy Utility Bills showing costs of \$183.98 for December 2012, \$240.16 for January 2013, and \$202.94 for February 2013.

This averages out to be \$209.03 per month

2. Water Bill show costs of \$198.41 for the third quarter of 2012, \$225.82 for the fourth quarter of 2012 and \$193.46 for the first quarter of 2013.

This averages out to be \$68.63 per month

3. Sprint cell phone bill for March 2013 at \$192.72

This would not be an allowable expense. Cell phones are a convenience; they are not a basic necessity, unless Petitioner's wife had no landline. Even then, only the cost of basic cell phone service would be allowed.

4. AT&T phone bill for \$49.14 and Internet Service \$77.09

The phone bill is an allowable expense. The internet service is not a basic necessity for the spouse. If the children need it, the allowance made for dependents should cover this cost.

5. Lunch Money paid to the children's school's totaling \$200

This would not be an allowable expense in determining the community spouse income allocation, because this is a need of the child, not the spouse.

6. Mortgage of \$671.25 per month
7. Payment on a Home Equity Loan taken out to address over \$20,000 in credit card debt - \$242.17 per month

It is debatable whether this would be an allowable expense for the life of the loan, but for at least a one year period, it might be allowable, to prevent the spouse from falling into poverty.

8. Home Owner's Insurance \$689.00 for 1-year

This works out to be \$57.41 per month

9. Car Insurance of \$332.60 for six months

This works out to be \$55.43 per month

10. Auto Repair bills of \$1696.85 from October 2012, an oil change \$39.60 from February 19, 2013.

This works out to be \$154.60 per month. The repair bill would only be an allowable expense for the year, to prevent the community spouse from falling into poverty.

11. Water Heater repair bill of \$230.00 from May 2, 2012.

This works out to be \$19.17 per month

Adding the foregoing allowable monthly expenses, we have \$1526.83.

Petitioner also asserts monthly food bills averaging \$500 - \$600. The total household food bill would not be allowed. Again, the Community Spouse Income Allocation is only for the spouse's living expenses, not for the children/dependents. A more reasonable allocation for the spouse's share of the food bill would be \$200 per month, which is consistent with the maximum allotment allowed in the FoodShare program for an individual. *FoodShare Wisconsin Handbook §8.1.2*

Adding the \$200 food expense to \$1526.83, we have total monthly expenses of \$1726.83. This is less than the \$2,841 MMMA. As such, there is no basis upon which to increase the Community Spouse Income Allocation above the MMMA at this time.

Petitioner's wife should note that even if the Community Spouse Income Allocation could be increased, it would only affect her husband's patient liability, if her monthly expenses exceeded her gross monthly income of \$3,706. If Petitioner has documentation of additional expenses that would push her over the \$3,706 threshold, she can provide them to the agency for review and file a new request for fair hearing.

Dependent Family Member Income Allocation

Federal regulations also allow the institutionalized person to allocate income to dependent family members, which can include both minor children and children 18 years or older who are claimed as dependents for tax purposes and who live with the community spouse. See Wis. Stat. § 49.455 and 42 U.S.C. §13964-5; also see *MEH §§18.1 and 18.6.1*. The allowance for dependent family members is calculated by subtracting the family member's income from \$630.42 (the maximum dependent family member income allocation). *MEH §§18.6.3*

With regard to the minor children, the agency correctly calculated the dependent family member income allocation:

\$630.42 Maximum Dependent Family Member Income Allocation
 -\$229.00 Social Security Income

\$331.42 Dependent Family Member Income Allocation

\$331.42 x 2 children = \$662.84

However, in looking at the Institution Medicaid Budget printout provided by the agency, it appears that the agency might have made an error because it did not include Petitioner's oldest child. While the eldest child is not a minor, she is still living with Petitioner's wife and from what Petitioner stated in her testimony and her request for fair hearing, it sounds like Petitioner pays for more than half of the child's living expenses. As such, the eldest child would likely qualify as a dependent for tax purposes and would therefore, be a dependent family member for Medicaid purposes. The agency will have to verify whether Petitioner's wife claimed or will claim the eldest child as a dependent on her taxes and the agency will have to verify the eldest child's income and re-calculate Petitioner's patient liability.

If this outcome is still unsatisfactory to Petitioner/Petitioner's wife, he/she will have to file a new request for fair hearing.

CONCLUSIONS OF LAW

The agency did not correctly determine Petitioner's patient liability.

THEREFORE, it is

ORDERED

That the agency send to Petitioner, in care of his spouse, a notice requesting verification of the eldest daughter's dependent status and income within 10 days of the date of the request for verification. Upon receipt of the verification, the agency shall immediately recalculate Petitioner's patient liability. The agency shall take all administrative steps necessary to complete these tasks within 20 days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin

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53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of April, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals