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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MRA/139362

PRELIMINARY RECITALS

Pursuant to a petition filed February 29, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Marathon County Department of Social Services in regard to Medical Assistance (MA), a hearing was held on April 3, 2012, at Wausau, Wisconsin.

The issue for determination is whether all or a portion of the petitioner's income should be "allocated" (disregarded) under spousal impoverishment provisions

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Sherri Seubert, ES Lead Worker
Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:
Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted] is a resident of Marathon County.

2. The petitioner lives in a nursing home. He filed an application for Institutional /Long Term Care MA on February 16, 2012. On February 28, 2012, the county agency issued written notice to the

petitioner advising that he would have to contribute $1,252.10 toward his nursing home care expense (the balance is paid for by MA) from February, 2012 onward. After the spouse's income dropped under $2,841 monthly, the patient liability contribution was declared to be $1,075.50 monthly from May 1, 2011, forward. The February 28 notice also advises the petitioner that only the $45 personal allowance and his $291.40 health insurance premium cost would be subtracted from his income in this nursing home liability computation.

3. The petitioner has a spouse, [redacted] residing in the community. At application, she had an average gross monthly income of $3,399.95 ($2,237.95 earned income plus $1,162 Social Security). The Maximum Community Spouse Income Allocation is $2,841. Because the spouse's gross income was over the $2,841 maximum allocation amount, the Department automatically determined that none of the institutionalized spouse's income would be allocated to her through April, 2012.

4. The petitioner has gross monthly income of $1,511.00. After subtraction of the $45 statutory personal allowance, the $213.90 health insurance premium, and the zero Community Spouse Income Allocation, the Department determined that the petitioner had $1,252.10 (from February - April) available to contribute toward the cost of his nursing home care. From May 1 onward, $176.60 is being allocated to his spouse.

5. [redacted] has identified living expenses at hearing that total $5,240.

6. Of the monthly expenses referred to in Finding #5, **$5,046** are reasonable, basic and necessary living expenses. The petitioner has atypical expenses for the spouse of a nursing home resident in that (1) she still has mortgages, (2) she is employed, and therefore pays income taxes, and (3) she expends gas to go to work and visit her husband at the nursing home, which is five miles away.

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, s/he may allocate some of her income to the community spouse if the community spouse's gross monthly income does not exceed the Maximum Community Spouse Income Allocation of $2,841.00. See *MA Eligibility Handbook (MEH)*, 18.6.2, available online at http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm. In this case, the gross income of the community spouse is over $3,300. The Department therefore initially allocated zero from the institutionalized spouse's net income to her as the community spouse.

The community spouse argues that she cannot get by without a larger allocation. The county agency does not have discretion to allocate income to her that would cause her "income plus allocation" total to exceed $2,841. However, I have some limited discretion and have determined that [redacted] income is short of what she 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. I conclude that the Maximum Allocation must be raised to **$5,046 for 53 months, followed by $3,916 thereafter,** to avert financial duress. Exceptional circumstances are present here: the spouse (1) has mortgage payments, (2) is employed and pays income taxes, and (3) has costs incurred in visiting her husband. See s.49.455(8)(c), Wis. Stats. The acceptable monthly expenses verified by the community spouse are as follows:

Mortgages	1391.00
Property taxes	237.00
Gas/electricity/water	275.00
Water softener expense	84.00
Telephone/internet	133.00
Federal income tax	167.00
State income tax	111.00
SocSec/Medicare taxes	137.00
Car payment	469.00
Car/home insurance	101.00
Gas (car)	150.00
Vehicle maintenance	40.00
Groceries	200.00
Home maintenance	75.00
Charge card debts ($37,165 balance)	1130.00 (min. balances)
Dentist debt (from husband, $808 balance)	67.00
Wife's supplemental health insurance	129.00
Wife's Part D insurance	15.00
Wife's dental insurance	32.00
Wife's vision insurance	21.00
Haircare	22.00
Clothes/toiletries	60.00
TOTAL	$ 5046

In setting the Maximum Allocation at $5,046, I accepted as accurate the budget numbers provided by the community spouse in her exhibits. The county agency may leave this $5,046 Maximum Allocation in place for 53 months, and then insert a $3,916 Allocation indefinitely (or the Maximum Allocation established in the *Handbook* at the time, if higher) unless the petitioner's spouse's circumstances change significantly. The higher amount is to allow the petitioner to pay off the charge card debt. I was not able to accelerate the debt repayment (as there is no benefit to either the petitioner or the Department in having her accumulate exorbitant credit card interest charges over a long period of time) due to insufficient income stream for this household.

Some of the expenses identified by the community spouse were not included in setting the Maximum Allocation. The excluded monthly expenses were eating out/entertainment, a newspaper subscription (the petitioner has internet service) and a second (cell) phone. Although I believe that the spouse does spend these amounts, I do not conclude that they are basic living expenses. Thus, they were not included.

CONCLUSIONS OF LAW

1. Due to exceptional circumstances, the petitioner's spouse requires $5,046 to live on from February 1, 2012 through June 30, 2016.
2. Due to exceptional circumstances, the petitioner's spouse requires $3,916 to live on from the 54th month of patient liability onward.

THEREFORE, it is **ORDERED**

That the petition for review herein be *remanded* to the county agency with instructions to increase the petitioner's Maximum Community Spouse Income Allocation to **$5,046** effective with the February, 2012, cost of care liability determination. The Maximum Allocation will be adjusted to **$3,916** effective with the July, 2016, cost of care liability determination. 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

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 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, Room 651, Madison, Wisconsin 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 Madison, Wisconsin, this 5th day of April, 2012

/sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals

c: [redacted]