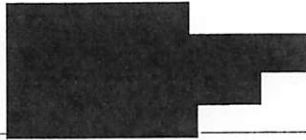




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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MRA/139168

PRELIMINARY RECITALS

Pursuant to a petition filed February 27, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance (MA), a hearing was held on March 28, 2012, at Waupaca, 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:



Respondent:

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

By: Jane Voelker, ES Spec.
Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waupaca County.
2. The petitioner has lived in a nursing home since November, 2010. He filed an application for Institutional /Long Term Care MA, and was found eligible beginning with November, 2010. On

January 18, 2012, the Department issued a notice to the petitioner advising that his MA would be discontinued effective February 1, 2012, due to failure to complete an annual review. The review was then completed. On February 2, 2012, the Department issued written notice to the petitioner advising that his patient liability contribution would increase, to \$674.05, for his nursing home care expense (the balance is paid for by MA) effective February 1, 2012. That notice also advises the petitioner that only the \$45 personal allowance and his \$859.58 spousal income allocation would be subtracted from his income in this nursing home liability computation.

3. The petitioner has a spouse, [REDACTED] residing in the community. She has an average gross monthly income of \$1,809, all of it earned income. The Maximum Community Spouse Income Allocation is \$2,668.58. Because the spouse's gross income was under the \$2,668.58 maximum allocation amount by \$859.58, the Department automatically determined that \$859.58 of the institutionalized spouse's income would be allocated to her.
4. The petitioner has gross monthly income of \$1,578.63. After subtraction of the \$45 statutory personal allowance and the \$859.58 Community Spouse Income Allocation, the Department determined that the petitioner had \$674.05 (from February onward) available to contribute toward the cost of his nursing home care.
5. Ms. [REDACTED] has identified living expenses at hearing that total \$3,048.00.
6. Of the monthly expenses referred to in Finding #5, **\$2,715.00** are reasonable, basic and necessary living expenses. The petitioner has atypical expenses for the spouse of a nursing home resident in that (1) she has poor English and is taking ESL classes to communicate adequately in her husband's absence, (2) she is employed, and therefore pays income taxes, and (3) she visits her husband at a facility that is distant from her residence, and incurs expenses in connection with the visits.

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 his income to the community spouse if the community spouse's gross monthly income does not exceed the Maximum Community Spouse Income Allocation of \$2,668.58. See *MA Eligibility Handbook (MEH)*, 18.6.2, online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. In this case, the gross income of the community spouse is \$1,809. The Department therefore allocated \$859.58 from the institutionalized spouse's net income to him 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 \$2,668.58. However, I have some limited discretion and have determined that Ms. [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 **\$2,715.00**, to avert financial duress. Exceptional circumstances are present here: the spouse (1) is employed and pays income taxes, and (2) has long-distance 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:

Rent	630.00
Renter's insurance	7.00
Utilities/water	168.00
Telephone	82.00
Federal income tax	131.00
State income tax	90.00
SocSec/Medicare taxes	112.00
Car payment	359.00
Car insurance	55.00
Gas (car)	270.00
Vehicle maintenance	20.00
Groceries	200.00
Wife's health insurance	384.00
Wife's health ins deductible	50.00
Wife's dental insurance	47.00
Wife's eye care	25.00
Wife's ESL/school	5.00
Haircuts	15.00
Clothes/toiletries	<u>65.00</u>
 TOTAL	 \$2,715.00

In setting the Maximum Allocation at \$2,715, I accepted as accurate the budget numbers provided by the community spouse in her exhibits. The county agency may leave this \$2,715 Maximum Allocation in place indefinitely (or until the Maximum Allocation established in the *Handbook* becomes higher), unless the petitioner's spouse's circumstances change significantly.

Some of the expenses identified by the community spouse were not included in setting the Maximum Allocation. The excluded monthly expenses were tithes, gifts, life insurance, spending money for the institutionalized spouse, and cable TV. 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. The petitioner listed \$100 for spending for the institutionalized spouse. Because the MA statute has prescribed a \$45 spending allowance, and because the institutionalized spouse's spending does not assist the community spouse's survival, the amount cannot be allowed.

CONCLUSIONS OF LAW

1. Due to exceptional circumstances, the petitioner's spouse requires \$2,715 to live on for February 1, 2012, forward.

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 **\$2,715** effective with the February, 2012, 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 26th day of April, 2012

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

c:

[REDACTED]