



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MRA/153656

PRELIMINARY RECITALS

Pursuant to a petition filed November 25, 2013, 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 December 19, 2013, at Waukesha, Wisconsin.

The record was held open until December 27, 2013, to allow Attorney Sage to submit a list of expenses and supporting documentation for Petitioner's spouse. No documentation was received by the designated deadline. On January 2, 2014, Attorney Sage submitted a 39-page packet, indicating Petitioner's spouse was ill and could not timely submit documentation to Attorney Sage. The packet has been received, marked as Exhibit 5 and entered into the record.

The issue for determination is whether the Minimum Monthly Maintenance Needs Allowance / Community Spouse Income Allocation may be raised for Petitioner's spouse.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Attorney John Sage
2835 S. Moorland Rd.
New Berlin, WI 53151-3743

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Shawn Carlson, Economic Support Specialist
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On October 30, 2013, the agency sent Petitioner a notice indicating that his application for Institution Long-Term Care Medicaid was approved with a patient liability of \$1650.80. (Exhibit 2, pgs. 6-11; Exhibit 3)
3. The agency determined the Community Spouse Income Allocation to be \$237.20. (Exhibit 3)
4. Attorney Sage filed a request for fair hearing on behalf of Petitioner, that was received by the Division of Hearings and Appeals on November 22, 2013. (Exhibit 1)
5. Petitioner's income is \$1933.00 per month from Social Security. (Exhibit 2, pgs. 1 and 9; Exhibit 3)
6. Petitioner's wife has income of \$2,660.80 per month from her employment. (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 (\$45.00 for everyone)
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

There is no assertion and no evidence that Petitioner has any dependents other than his spouse. It is undisputed that Petitioner’s daughter is no longer a minor and is attending college.

There is no assertion that Petitioner has court ordered guardian or attorney fees or other special exempt income.

The deduction with which Petitioner seemed to be most concerned was the Community Spouse Income 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 \$2,898 or \$2,585 plus excess shelter costs. MEH § 18.6.2. Excess shelter costs are shelter costs above \$775.50. 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*.

It is undisputed that in Petitioner's case, the MMMNA is \$2,898 unless it can be shown that Petitioner's basic and necessary maintenance needs require a higher MMMNA. Petitioner's spouse essentially asked that her expenses be examined and that the MMMNA be increased. Petitioner's spouse claimed the following monthly expenses for herself in a spreadsheet attached to Exhibit 5:

1. Wisconsin Mutual Auto Insurance	\$76.17	(Exhibit 5, pg. 8)
Petitioner's car is a Toyota Camry		
2. Freedom Mortgage Payment	\$1,107.75	(Exhibit 2, pgs. 36, 39)
3. GM Financial Car Payment	\$511.68	(Exhibit 2, pg. 80)
For a 2011 Dodge Truck		
4. Monthly Food, Toiletries, cleaners, etc.	\$240.00	(Exhibit 2, pgs. 32-51)
5. Gasoline	\$250.00	(Exhibit 2, pgs. 32-51)
6. Car Warranty/Protection Plan	\$85.25	(Exhibit 2, pg. 54)
For a 2011 Dodge Caravan		
7. First Bank Center Installment Loan	\$59.13	(Exhibit 2, pgs. 57 and 58, 97-108)
8. AT&T U-Verse Internet	\$46.00	(Exhibit 5, pg. 10)
9. AT&T home phone	\$35.00	(Exhibit 5, pg. 10)
10. AT&T Cell phone	\$90.55	(Exhibit 5, pg. 11)
11. Oconomowoc Utilities Electricity	\$121.35	(Exhibit 2, pg. 59)
12. Oconomowoc Water	\$36.59	(Exhibit 2, pg. 60)
13. WE Energies	\$46.76	(Exhibit 5, pg. 7)
14. Dish Network	\$79.47	(Exhibit 2, pg. 33, 35, 47, 50)
15. Netflix	\$8.44	(Exhibit 2, pg. 33, 36, 42)
16. Group Life Insurance	\$67.48	(Exhibit 2, pgs. 20-31)
17. Fed Withholding	\$68.00	(Exhibit 2, pgs. 20-31)
18. State Withholding	\$118.00	(Exhibit 2 pgs. 20-31)
19. Social Security Withholding	\$147.00	(Exhibit 2, pgs. 20-31)
20. Medicare Withholding	\$34.00	(Exhibit 2, pgs. 20-31)
21. Health Insurance	\$143.00	(Exhibit 5, pg. 3)
22. Dental Insurance	\$11.00	(Exhibit 5, pg. 3)
23. Vision Insurance	\$4.89	(Exhibit 5, pg. 3)
24. Long Term Disability Insurance	\$3.48	(Exhibit 2, pgs. 20-31)
25. Health Care Insurance	\$125.00	(Exhibit 2, pgs. 20-31)
26. ProfitSharing (401K) Loan Repayment	\$45.78	(Exhibit 5, pg. 13)
27. Associated Bank Credit Card	\$34.00	(Exhibit 5, pg. 9)
28. Lowe's Credit Card	\$45.00	(Exhibit 5, pg. 16)
29. AmericanTV	\$45.00	(Exhibit 5, pg. 5)

OTHER DEBTS

30. Shelble Law Firm Debt Collection	\$90.00	(Exhibit 2, pgs. 71-77)
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31. Forward Dental of Oconomowoc	\$50.00	(Exhibit 2, pg. 69)
32. Regional Acceptance Association	\$150.00	(Exhibit 2, pg. 67)
For a 2010 Jeep Patriot		
33. Traub Chiropractic	\$65.00	(Exhibit 2, pgs. 84-93)
34. Pearle Vision \$994.00	\$50.00	(Exhibit 2, pg. 96)
35. United Recovery Systems	\$50.00	

Regrettably, not all of the claimed expenses can be allowed as basic and necessary expenses for maintaining Petitioner's spouse:

The GM car payment for the 2011 Dodge Truck is not a basic and necessary expense for Petitioner's spouse, as that is Petitioner's vehicle. For that same reason the car warranty/protection plan is not an allowable expense, nor is the debt for the 2010 Jeep Patriot.

Medicaid cannot be expected to pay more for Petitioner's care, so that Petitioner's wife can pay off commercial debt for potentially non-essential items. Because it has not been shown that Petitioner's wife incurred debt to pay for basic and necessary needs, the First Bank Center Loan, the ProfitSharing Loan Repayment, the Associated Bank credit card, the Lowe's credit card, the American TV debt, and the United Recovery Systems debt cannot be allowed at this time.

It is not necessary for a person to have both a landline and a cell phone. Given that Petitioner is working, it is reasonable to conclude that she might need her cell phone for work. As such, the landline will not be allowed as an expense.

Satellite television and Netflix services are generally luxuries and not a basic necessity. As such, Dish Network and Netflix expenses will not be allowed.

Life insurance is generally there to benefit the people who survive the insured. In the absence of evidence showing how the Group Life Insurance is meeting a basic and necessary need of Petitioner's spouse, the expense will not be allowed.

With regard to the debt being collected by Shelble Law Firm, the documentation in the record does not make clear who incurred that debt and there is some conflicting information that at least some of the debt has been paid off. In the absence of clear documentation showing that debt was incurred to meet a basic and necessary expense of Petitioner's spouse, the expense will not be allowed at this time.

With regard to the debt for Pearl Vision, the documentation does not make clear how a \$994.00 bill was accrued and who received the goods/services from Pearl Vision. As such, the claimed expense will not be allowed at this time.

Finally, while amounts withheld from Petitioner's spouse's paycheck may be allowed as a basic and necessary expense, but the dollar amounts stated in the spread sheet are not supported by the pay information provided in Exhibit 2. Looking at the August 30, 2013 paycheck and averaging out the withholding that occurred over eight months, the figures come out to be \$105.57 per month for Federal Withholding, \$132.41 for State withholding; \$174.03 per month for Social Security; and \$40.70 for Medicare withholding. (This is actually higher than the figures provided in the spread sheet)

Adding the foregoing allowable monthly expenses, we have \$2870.25 per month. This is less than the \$2,898 MMMNA. As such, there is no basis upon which to increase the MMMNA at this time and without an increase in the MMMNA, there cannot be an increase in the CSIA.

CONCLUSIONS OF LAW

There is no basis upon which to increase the MMMNA / CSIA for Petitioner's spouse at, this time.

THEREFORE, it is

ORDERED

That 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 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, 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 Milwaukee,
Wisconsin, this 6th day of February, 2014.

\sMayumi M. Ishii
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 February 6, 2014.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability
Attorney John Sage