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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MRA - 216768

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on January 24, 2025, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the La Crosse County Department of Human Services regarding Medical Assistance (MA), a hearing was held on March 5, 2025, by telephone.

The issue for determination is whether Petitioner's spouse, [REDACTED], is entitled to an increased spousal income allocation from Petitioner, who resides in a skilled nursing facility, to meet her necessary and basic maintenance needs.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner's Representative:**

Attorney Amanda Grady  
Greater Wisconsin Agency on Aging Resources, Inc.  
Elder Law & Advocacy Center  
1414 MacArthur Rd Suite 306  
Madison, WI 53714

**Respondent:**

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

By: Dana Lee

La Crosse County Department of Human Services  
300 N. 4th Street  
PO Box 4002  
La Crosse, WI 54601

**ADMINISTRATIVE LAW JUDGE:**

Teresa A. Perez  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Vernon County who has resided in a skilled nursing facility since March 2024; his spouse resides in the community (hereafter referred to as “community spouse”).
2. Petitioner has been eligible for Institutional Medical Assistance (referred to by the agency as “Nursing Home Long-Term Care”) since at least June 2024.
3. The community spouse has the following recurring and/or monthly expenses:

1.	\$374.02	Mortgage and property taxes	
2.	\$52.67	homeowner’s insurance	
3.	\$250.00	Electricity, sewer, water	
4.	\$60.00	Heat/gas	
5.	\$12.00	trash	
6.	\$106.34	Medical insurance premiums	
7.	\$145.00	medical debt (\$45 [REDACTED] [REDACTED] and \$100 [REDACTED])	Approximate \$2,300 balance for Gunderson as of November 2024
8.	\$91.86	phone	
9.	\$54.05	Internet	
10.	\$140	Retirement account contributions	
11.	\$462.19	Average monthly taxes withheld from paychecks	
12.	\$500	Food and household supplies	
13.	\$117.17	Home maintenance	
14.	\$50	Clothing, personal care, haircuts	
15.	\$394.16	Car loan payment	Approximate \$6,900 balance as of November 2024
16.	\$250.00	Car gas, maintenance, & registration	
17.	\$63.42	Car insurance	
18.	\$50.00	Shoveling snow and lawn care	
19.	\$209.01	Credit card (\$207.24 per month charge for insulin pump purchase)	
20.	\$117.00	Insulin pump supplies	
21.	\$97.17	Insulin sensor	
22.	\$40.00	Insulin strips	
23.	\$50.00	Insulin	
24.	\$10.00	Prescriptions	

**These recurring and/or monthly expenses total \$3,696.06.**

4. As of December 2024, Petitioner has gross monthly income of \$1,150 from Social Security. Prior to that, Petitioner's gross monthly benefit amount was \$1,122.
5. As of January 2025, Petitioner's monthly health insurance premium increased to \$20.30.
6. The community spouse works for [REDACTED] and has variable monthly income. She is paid every other week. Her 2025 year to date gross income as of February 13, 2025 was \$5,067.87 which amounts to an average of \$1,266.97 per paycheck (i.e., approximately \$2,533.94 per month).
7. In December 2024, the agency assessed Petitioner no patient liability in compliance with a prior hearing decision (DHA Case No. MRA-215190) that ordered the agency to allow Petitioner to allocate \$1,050.90 to his community spouse.
8. Effective January 2025, following a cost of living adjustment to Petitioner's Social Security, the agency began to assess Petitioner a monthly patient liability of \$28.
9. On January 24, 2025, Petitioner filed a request for fair hearing to request an additional increase in the community spouse income allocation.

**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). However, a married institutionalized Medical Assistance recipient may allocate income to their spouse who resides in the community to guard against that "community spouse" from falling into poverty. See Wis. Stat. §49.455; 42 U.S.C. §13964-5; and *Medicaid Eligibility Manual (MEH)* §§18.1 and 18.6. The agency may set a community spouse income allocation at an amount sufficient to raise the community spouse's total income up to an amount referred to as the minimum monthly maintenance needs allowance (MMMNA). Wis. Stat. §49.455(4)(b). The MMMNA (referred to in the Department's current policy manual as the "community spouse lower income allocation limit") effective as of July 1, 2024 is \$3,406.66. See *MEH* §39.4.4 and 18.6.2. If a community spouse demonstrates that s/he has "excess shelter costs", the agency may increase the MMMNA to a maximum of \$3,948. *MEH* §39.4.4.

In this case, the community spouse's only income in her own name is earned income from a job at [REDACTED] and her monthly hours and wages vary. The agency correctly set the community spouse income allocation at \$1,050.90 in compliance with the specific terms of the order set forth in DHA Case No. MRA-215190 effective September 2024. Based on the specificity of the order, the agency had no discretion to increase that amount further despite the increase in the Social Security benefit and increase to Petitioner's health insurance premium.

An administrative law judge (ALJ) has discretion beyond that of the agency to increase the MMMNA though the ALJ's discretion is not unfettered. The relevant statute provides the following standard:

(c) If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse monthly income allowance under sub. (4)(b).

Wis. Stat. § 49.455(8)(c). The relevant administrative code provision, in turn, provides the following definition of the term exceptional circumstances resulting in financial duress: “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); see also, *MEH* §18.6.2.

Based on the evidence in the hearing record and, as detailed above, I find that the community spouse has **\$3,696.06** in necessary and basic maintenance needs. See Finding of Fact No. 3. Because the community spouse has approximately \$2,533.94 of income in her own name, she would require \$1,162.12 to cover those necessary and basic maintenance needs. See Finding Fact No. 6. And, because Petitioner has income in excess of the current \$1,050.90 community spouse income allocation available, that allocation may be increased.

If Petitioner’s necessary and basic living expenses identified in Finding of Fact No. 3 continue to exceed her gross income, and if Petitioner’s income increases, the agency may increase the spousal income allocation as long as the total of the community spouse’s gross income and the total allocation remains at or under \$3,696.06. The language in the order below is written to allow such adjustments without requiring that Petitioner request another hearing.

This decision does not prohibit the agency from conducting an annual review in 2026, and subsequent years. Petitioner is therefore encouraged to maintain documentation to verify her ongoing expenses and income and to be prepared to share that with the agency.

### **CONCLUSIONS OF LAW**

- (1) Petitioner’s community spouse has \$3,696.06 in basic and necessary monthly maintenance needs
- (2) Because Petitioner’s basic and necessary monthly maintenance needs exceed the sum of the income that she receives in her own name and the current \$1,050.90 that Petitioner allocates to her, Petitioner is entitled to increase the amount of income that he allocates to her.
- (3) Pursuant to Wis. Stat. §49.455(8)(c), the sum of Petitioner’s allocation and the community spouse’s own income may not exceed the community spouse’s basic and necessary monthly maintenance needs.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with the following instructions:

- (1) Effective January 2025, use \$3,696.06 as Petitioner’s “community spouse income allocation maximum” (i.e., minimum monthly maintenance needs allowance)
- (2) Effective January 2025, allow Petitioner to allocate all of his income that remains after deducting his personal needs allowance and health insurance premium, to his spouse and reduce his patient liability accordingly.
- (3) Effective January 2025, update Petitioner’s case to reflect that his monthly health insurance premium is \$20.30.
- (4) Issue a notice of decision with the adjusted figures.

The agency shall comply with this order within 10 days of the date of this decision.

## 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, 5<sup>th</sup> 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.

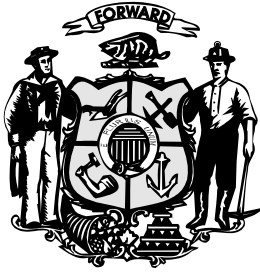
## APPEAL TO COURT

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 Madison,  
Wisconsin, this 6th day of March, 2025

\s \_\_\_\_\_  
Teresa A. Perez  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on March 6, 2025.

La Crosse County Department of Human Services  
Division of Health Care Access and Accountability  
Attorney Amanda Grady