



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MRA-13/102

709

PRELIMINARY RECITALS

Pursuant to a petition filed March 13, 2009, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Dane County Dept. of Human Services in regard to Medical Assistance, a hearing was held on April 03, 2009, at Madison, Wisconsin. At the request of petitioner's representative, the record was held open for one week for argument and additional documentation to be submitted to the Division of Hearings and Appeals (DHA). Petitioner's representative timely submitted argument and evidence to DHA by April 10, 2009, which are received into the record and marked as Exhibit 4.

The issue for determination is whether the community spouse's income allocation may be increased and the petitioner's patient liability reduced retroactive to September 1, 2008.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Representative:

Phoebe Hefko, benefit specialist
Coalition of Wisconsin Aging Groups
2850 Dairy drive, Suite 100
Madison, WI 53718

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53702

By: Deb Solis, ESS

Dane County Dept. of Human Services
1819 Aberg Avenue, Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein, Attorney

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED] is a 64 year old resident of Dane County who is a resident of a nursing home and receives Institutional Medical Assistance. His wife, [REDACTED] resides in the community in a private residence.
2. Petitioner's wife receives the following monthly income: a) a pension of \$572.25; b) SSDI of \$1,254.00; c) self-employment income of \$200.46 for a total gross monthly income of \$2,026.71. See Exhibits 1 and 2. Mrs. [REDACTED] became disabled about two years ago forcing her to retire from her employment. See Exhibit 3.
3. The petitioner receives the following monthly income: a) SSDI of \$1,446.10; b) long term disability from Hartford of \$597.00; c) gross pension from Hartford \$457.21 for a total gross income of \$2,500.31. See Exhibit 1.
4. The petitioner's wife originally applied for Institutional MA on behalf of her husband on October 21, 2008 and requested MA backdated to September 1, 2008. Due to problems, petitioner's wife re-applied for petitioner on December 30, 2008. See Exhibit 5.
5. The county agency sent a February 11, 2009 Notice of Decision to the petitioner which stated that petitioner was certified as eligible for Institutional MA retroactive to September 1, 2008. See Exhibits 4 & 5.
6. The county agency sent a February 16, 2009 Notice of Decision to the petitioner indicating that his patient liability was \$1,244.07 during 2008, and that his patient liability increased to \$1,395.77 as of January 1, 2009. See Exhibits 2 & 4.
7. The maximum income allocation was \$2,739.00, and that with Mrs. [REDACTED] gross income of \$2,026.71, that the county was allocating \$712.29 from petitioner's income to raise her community spouse's income as of September, 2008.
8. Petitioner filed this March 13, 2009 appeal requesting an increase in his community spouse's income allocation as of September 1, 2008 from \$712.29 to \$1,123.77 thereby raising petitioner's wife's Minimum Monthly Maintenance Needs Allowance (MMMNA) from \$2,739.00 to \$3,862.77.
9. During the April 3, 2009 hearing and while the record was held open, petitioner's representative submitted evidence that Mrs. [REDACTED] had exceptional expenses which required an increase in her monthly income allocation retroactive to September 1, 2008. See Exhibit 4.
10. The petitioner's wife established that she has basic and necessary monthly expenses totaling \$3,862.77 as of September 1, 2008. See Exhibits 1-5.
11. The county stipulated that petitioner should be eligible for Institutional MA and appropriate income allocation retroactive to September 1, 2008. See Exhibit 5.

DISCUSSION

The federal Medicare Catastrophic Coverage Act of 1988 included extensive changes in State Medicaid eligibility determinations as they relate to spousal impoverishment where one spouse is a resident in a nursing home. The purpose of the new act was to protect a "community" spouse's

assets and resources and designate how a spousal share would be computed. The Act also established a new minimum needs allowance for the community spouse at a specified percentage of the federal poverty line. Sec. 49.455, Wis. Stats., is the Wisconsin codification of 42 U.S.C. s.13964-5 (MCCA). Among other things, the "spousal impoverishment" provisions at sec. 49.455 direct the Department to establish an income allowance for the community spouse of an institutionalized person. Consequently the Wisconsin Legislature enacted sec. 49.455, Wis. Stats. in order to bring the Wisconsin Medicaid program into conformity with federal law. Section 49.455 specifically states that the department is to use the criteria of that statutory section in determining the eligibility for medical assistance under §49.46 or 49.47, Wis. Stats. and the required contribution toward the care of an institutionalized spouse.

"Community spouse" refers to the person who is married to an institutionalized individual. See sec. 49.455(1), Wis. Stats. As a general rule, no income of a spouse is considered to be available for use by the other spouse during any month in which that other spouse is an institutionalized spouse. See sec. 49.455(3), Wis. Stats. However, after an institutionalized person is found eligible for medical assistance (MA), he or she may allocate income to the community spouse.

The Minimum Monthly Maintenance Needs Allowance (MMMNA) is the established amount the MA program allows a community spouse based upon what has been determined necessary to allow that spouse to continue residing in the community. During September through December, 2008, the MMMNA was the *lesser* of \$2,610.00 per month, or \$2,333.33 plus the amount of shelter expenses incurred each month by the community spouse which exceed \$700.00, known as the "excess shelter allowance". Wis. Stat. §49.455(4)(b), *Medicaid Eligibility Handbook*, 18.6.2. The MMMNA has increased to \$2,739.00 as of January 1, 2009. The MMMNA is a general number considered to be the amount of monthly income the spouse of an institutionalized individual requires to continue residing in the community and meeting his or her *basic* maintenance needs.

The Community Spouse Income Allocation (CSIA) is the amount which a particular community spouse is determined to need to continue residing in the community and may actually exceed the MMMNA. The CSIA is defined as the greater of the MMMNA or an amount determined by a fair hearing. Wis. Stat. §49.455(4)(b).

Administrative law judges (ALJs) have the authority to increase the CSIA above the MMMNA where the MMMNA is insufficient to meet a particular community spouse's *basic* maintenance needs. Wis. Stat. §49.455(8)(c); Wis. Admin. Code §DHS 103.075(8)(c); *Medicaid Eligibility Handbook* 18.6. However, an increase in the CSIA above the MMMNA can be made through the fair hearing process only if it is established that the community spouse requires income above the level provided by the MMMNA due to the existence of "exceptional circumstances resulting in financial duress" for the community spouse. Wis. Stat. §49.455(8)(c); Wis. Admin. Code §DHS 103.075(8)(c). The relevant statutory provision states that the test for exception is as follows:

(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).

(emphasis added)

Sec. 49.455(8)(c), Wis. Stats. Thus an ALJ may augment the maximum allocation ceiling only by amounts needed to alleviate financial duress, to allow the community spouse to meet necessary and basic maintenance needs. During the hearing and while the record was held open, the petitioner's representative and his wife were able to establish exceptional circumstances regarding substantial medical costs, outstanding legal costs, household expenses, and other necessary expenses resulting in financial duress, which justified an increase in her minimum monthly maintenance allowance.

It is important to emphasize that even if income allocation is possible, not all expenses qualify. In order for an administrative law judge to use expenses, they must meet "necessary and basic maintenance needs" MA Handbook, Appendix 23.6.0. "Income Allocation". This corresponds to the statutory language that the new income amount is in lieu of the "minimum monthly maintenance needs". Sec. 49.455(8)(c), Stats., (emphasis added.) Because the community spouse is essentially asking state taxpayers to give the nursing home or group home resident more welfare in the form of MA, I do not think that every expense is automatically appropriate for inclusion, even if it is not frivolous.

During the hearing and in her April 7, 2009 submissions, petitioner's representative established petitioner's wife has average monthly expenses totaling \$3,862.77, due to exceptional expenses related to substantial medical costs, outstanding legal costs, household expenses, and other necessary expenses resulting in financial duress. See Exhibits 3 and 4. During the hearing and after the hearing, the county agency did not object to any of the petitioner's documented monthly expenses of \$3,862.77 as of September, 2008. In reviewing the expenses, I do not find any items which are not basic and necessary expenses. Since Mrs. [REDACTED] has already been allocated \$2,739.00 as of September 1, 2008 by the county agency, her monthly income allocation should be increased by \$1,123.77 from \$2,739.00 to \$3,862.77 retroactive to September 1, 2008. Accordingly, based upon the above analysis, the petitioner's request to increase the community spouse's income allocation as of September, 2008 is approved; and petitioner's request for a reduction in his cost of care contribution is also approved.

CONCLUSIONS OF LAW

1. The petitioner's wife was able to establish exceptional circumstances resulting in financial duress which justified an increase in her minimum monthly maintenance pursuant to sec. 49.455(8)(c), Wis. Stats.
2. The basic and necessary monthly expenses of petitioner's wife (community spouse) as of September, 2008 in the amount of \$3,862.77 warrant an increase in her income allotment and an appropriate reduction in petitioner's cost of care contribution.

NOW, THEREFORE, it is

ORDERED

That the matter is remanded to the county agency (Attention: ESS Deb Solis) with the following instructions: a) increase the community spouse's income allotment to increase her monthly income from \$2,739.00 to \$3,862.77 retroactive to September 1, 2008; and b) recalculate and reduce petitioner's cost of care retroactive to September 1, 2008, within 10 days of the date 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 filed 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. Appeals must be served on the Office of 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 53702

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 _____ day
of _____, 2009

Gary M. Wolkstein, Attorney
Administrative Law Judge
Division of Hearings and Appeals

C: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]