



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MRA-70/101343

PRELIMINARY RECITALS

Pursuant to a petition filed January 19, 2009, under Wis. Stat., §49.45(5), to review a decision by the Winnebago County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on February 18, 2009, at Oshkosh, Wisconsin.

The issue for determination is whether petitioner's husband is entitled to an increase in his community spouse income allocation.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Wisconsin Department of Health Services
1 West Wilson Street, Room 651
P.O. Box 7850
Madison, WI 53707-7850

By: Janet Hertzberg, ESS
Winnebago County Dept. Of Human Services
220 Washington Ave.
P.O. Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.

2. An application for MA was filed on petitioner's behalf in November, 2008. Petitioner was found to be eligible for nursing home MA, with a cost of care liability effective November 1, 2008.
3. Petitioner's monthly income was \$653 social security in 2008. It increased to \$696 in 2009.
4. Petitioner's husband [REDACTED] earns \$2,666 per month from his job. His community spouse income allowance was set at \$2,333, so none petitioner's income was allocated to him, leaving a monthly cost of care of \$608 in 2008, and \$651 in 2009.
5. [REDACTED] necessary monthly expenses total \$3,085 per month. Included in the expenses are income deductions for taxes and social security along with \$890 per month housing expenses, and payments on loans.

DISCUSSION

Wis. Stat., §49.455 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. That allowance set by the county, based upon petitioner's housing costs, is \$2,541. See MA Handbook, Appendix 5.10.6. The institutionalized person may divert some of his income to his community spouse rather than contributing to his cost of care. The amount of the diverted income, when combined with the spouse's income, cannot exceed the maximum allocation determined by the county. Any income of the institutionalized spouse that is not allocated to the community spouse or the personal needs allowance must be paid to the nursing home as the person's cost of care share.

An administrative law judge (ALJ) can grant an exception to this limit on income diversion. The ALJ may increase the income allowance following a fair hearing. The ALJ does not have unfettered discretion in creating an exception to the maximum allocation ceiling, however. 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).

Wis. Stat., §49.455(8)(c), emphasis added. 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.

I have reviewed the expenses for petitioner's husband. The standard for raising the income allowance is whether, due to exceptional circumstances that could result in financial duress, he needs additional income on top of the \$2,333 already allowed to him. Thus my job is not just to look at his expenses, but expenses that might cause financial duress due to exceptional circumstances.

I reviewed [REDACTED] list of expenses, and it is evident that he requires more than \$2,333 per month to avoid financial duress. The primary reason is that he is working, and a large chunk of his monthly income goes to payroll deductions. His listed expenses are reasonable, and thus I find that he requires \$3,085 per month to avoid financial duress. That would mean that \$419 of petitioner's social security can be allocated to him.

Included in [REDACTED] expenses were the monthly nursing home cost of care. Obviously I did not include that amount in my determination of his monthly need because that is the amount we are trying to determine

in this decision. [REDACTED] also mentioned that he has been contacted by the Department of Revenue about back taxes relating to an old business; however, since there is no monthly payment on those taxes at this point, it is premature to include the taxes in his budget. He can always request an increase in his income allowance if he is required to make monthly payments on the back taxes.

CONCLUSIONS OF LAW

Petitioner's husband needs \$3,085 monthly income to avoid financial duress.

NOW, THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to increase the monthly income allocation of petitioner's husband to \$3,085, retroactive to November 1, 2008. The county shall take the action within 10 days 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 Wisconsin Statutes § 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 Wisconsin 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 650, P.O. Box 7850, Madison, WI 53707-7850.

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 Wisconsin Statutes §§ 227.52 and 227.53.

Given

under my hand at the City of
Madison, Wisconsin, this 26th day of
February, 2009

/s/Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals
bcs

0223/

cc:

