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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MRA/135653

PRELIMINARY RECITALS

Pursuant to a petition filed September 30, 2011, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on January 11, 2012, at Kenosha, Wisconsin.

The issue for determination is whether Petitioner's community spouse's income allocation may be increased effective October 1, 2011.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



By: Roberta Bloner, advocate

Respondent:

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

By: Lauren Fox and Karen Mayer
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

NOTE: The record was held open to give Petitioner an opportunity to submit an itemized list of his spouse's monthly living expenses and any supporting documentation of those expenses. Petitioner's representative, Ms. Bloner faxed the 22 page packet of documents on January 12, 2012. It has been marked as Exhibit 4 and entered into the record.

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner has a community spouse.
3. On September 26, 2011, Kenosha County Human Services (hereinafter referred to as "the agency") sent Petitioner a notice indicating that effective October 1, 2011, he was enrolled in Institutional Medicaid with a monthly cost of \$175.83. (Exhibit 2, pg. 5)
4. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 3, 2011. (Exhibit 1)
5. Petitioner seeks an increase in his community spouse income allocation (CSIA).
6. It is undisputed that Petitioner's gross unearned income was \$2100, rounded to the nearest dollar (\$1593.00 in Social Security Income + \$35.12 from one pension + \$472 from a second pension.)
7. After a personal allowance of \$45.00, Petitioner's countable income was \$2055.
8. It is undisputed that Petitioner's community spouse's income was \$897 (\$831 from a pension + \$66 from Social Security Income)
9. It is undisputed that the total gross income for Petitioner and spouse was, after the \$45.00 personal allowance, \$2952 (\$2055 + \$897)
10. It is undisputed that there is no mortgage on the home in which Petitioner's spouse lives.
11. Petitioner's Spouse's monthly shelter expenses are \$705.55 (\$43.33 for homeowner's insurance + \$218.22 in property taxes + \$444 Standard Utility allowance) (See Exhibit 4, pg. 4, *Medical Eligibility Handbook (MEH)*, § 18.6.2.)
12. The maximum CSIA is currently the lesser of \$2739 or \$2451.67 plus shelter expenses in excess of \$750.50. Thus, in Petitioner's case it is \$2451.67.
13. The agency allocated \$1554.67 of Petitioner's income to his spouse to bring her income to \$2451.67. (See Exhibit 2)
14. Petitioner's spouse's monthly living expenses in November and December 2011 were listed by his advocate, Ms. Bloner, and were not contested by the agency. They were as follows:
 - a. Car insurance = \$ 68.88
 - b. Home owner's insurance = \$43.33
 - c. Umbrella policy = \$9.14
 - d. Life Insurance for Petitioner and Spouse = \$147.00
 - e. AT & T phone = \$74.66
 - f. Verizon Cellphone = \$79.81
 - g. QLT Speaker phone = \$19.40
 - h. WE Energies = \$193.00
 - i. Time Warner Cable = \$133.38
 - j. House Alarm = \$35.80
 - k. Unemployment Overpayment for Petitioner = \$200.00
 - l. Mastercard minimum monthly payment on a balance of \$16,306.22 = \$444.00

- m. Car payment = \$602.53
- n. Prescription medication past due balance for Petitioner = \$156.94
- o. Health insurance for both Petitioner and Spouse = \$242.44
- p. Water bill = \$25.64
- q. Property taxes = \$218.22
- r. Rx co-pay = \$76.42
- s. Food, toiletries, cleaning supplies = \$475
- t. Gas and oil for car = \$120
- u. Lawn cutting and snow removal services = \$35
- v. Eye glasses and exam = \$5.27
- w. Clothes = \$25.00

The above total is = \$3430.96

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, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of an institutionalized person so that she does not fall into poverty. *See Wis. Stat. § 49.455 and 42 U.S.C. § 13964-5*; also see *Medicaid Eligibility Manual (MEH), §18.1*. An institutionalized person may allocate some of his/her income to the community spouse. *MEH, §18.6.1*. The minimum monthly maintenance needs allowance (MMMNA) currently is the lesser of \$2,739 or \$2,451.67 plus excess shelter costs. *Medical Eligibility Handbook (MEH), § 18.6.2*. Excess shelter costs are shelter costs above \$735.50. *Id.*

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)*. Further, “...“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)*.

Thus, the standard to be applied by the Division of Hearings and Appeals in making a determination as to whether the CSIA may be increased is whether leaving the CSIA at the standard limit will result in financial distress for the community spouse such that the community spouse is unable to meet necessary and basic maintenance needs.

Petitioner asserts that his spouse needs \$3430.96 per month to meet her necessary and basic maintenance needs. However, not everything listed by Petitioner’s advocate qualifies as an expense to meet the necessary and basic maintenance needs of petitioner’s spouse:

- Petitioner’s community spouse lists a \$79.81 cell phone expense and a \$74.66 AT&T phone expense. This is not an expense can be supported under the necessary and basic

maintenance needs. I note that the FoodShare (f/k/a Food Stamp) program allows \$29.00 as a telephone deduction. *FoodShare Eligibility Handbook, Appendix 8.1.3*. I am, therefore, going to limit the deduction to that \$29.00 amount.

- Petitioner's community spouse has not made clear why the QLT speaker phone is necessary to meet his wife's basic maintenance needs. As such, the \$19.40 expense is not allowable.
- Petitioner's community spouse notes a \$133.38 monthly expense to Time Warner Cable. I cannot find that this expense can be supported under the necessary and basic maintenance needs standard.
- Petitioner's community spouse lists a \$35.80 monthly expense for a home alarm system. This is not a basic maintenance need.
- Petitioner's community spouse also listed a monthly expense for food, toiletries and cleaning supplies at \$475 per month. That is excessive given that there is no evidence that Petitioner has any other dependents living with the community spouse. A more reasonable estimate of such expenses would be \$237.50 per month. This is especially true, given that a household of one person would receive a maximum FoodShare benefit of \$200 per month. *FoodShare Eligibility Handbook, Appendix 8.1.3*.

Thus, I am reducing the requested increase by \$551.55. ($\$74.66 + 79.81 - \$29.00 + 133.38 + 19.40 + 35.80 + 237.50$)

This means I am increasing the maximum CSIA by an additional \$402.61 per month to a total of \$2854.28 per month, so that Petitioner's community spouse should be receiving an allocation of \$1957.28 per month.

As a side-note to the petitioner and his community spouse, this Decision fully contemplates that the community spouse will make an effort to decrease her credit card debt. Such progress will be considered in any future requests for income allocations above the standard maximum CSIA under law.

CONCLUSIONS OF LAW

That Petitioner has demonstrated that an increase in his community spouse income allowance in the amount of \$402.61 is warranted.

THEREFORE, it is

ORDERED

That the matter be remanded to the county agency with instructions to add \$402.61 per month to the community spouse income allowance effective October 2011, for a period of two years. The county agency must take these steps within 10 days of the date of his Order.

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).

Appeals to Circuit Court should name the Department of Health Services as the respondent. After filing the appeal with the appropriate court, it 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 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 17th day of January, 2012

/sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

c: 