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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MRA/139105

PRELIMINARY RECITALS

Pursuant to a petition filed February 27, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance (MA), a hearing was held on March 28, 2012, at Waupaca, Wisconsin. The hearing record was held open for two days for a submission from the petitioner, which was received.

The issue for determination is whether all or a portion of the petitioner's income should be "allocated" (disregarded) under spousal impoverishment provisions.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Jane Voelker, ES Spec.
Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The petitioner lives in a nursing home. He filed an application for Institutional /Long Term Care MA and was found to be eligible beginning with March, 2010. On December 5, 2011, the county agency issued written notice to the petitioner advising that he would have to contribute \$1,300.43 toward his nursing home care expense (the balance is paid for by MA) effective January 1, 2012. That notice also advises the petitioner that only the \$45 personal allowance would be subtracted from his income in this nursing home liability computation.
3. The petitioner has a spouse, [REDACTED] residing in the community. She has an average gross monthly income of \$533 from Social Security. The Maximum Community Spouse Income Allocation is \$2,841. Because the spouse's gross income was under the \$2,841 maximum allocation amount by \$2,308, the Department automatically determined that \$2,308 of the institutionalized spouse's income would be allocated to her.
4. The petitioner has gross monthly income of \$3,653.46. After subtraction of the \$45 statutory personal allowance and the \$2,308 Community Spouse Income Allocation, the Department determined that the petitioner had \$1,300.43 available to contribute toward the cost of his nursing home care.
5. Ms. [REDACTED] has identified living expenses at hearing that total \$3,456.00.
6. Of the monthly expenses referred to in Finding #5, \$3,456 are reasonable, basic and necessary living expenses. The petitioner has atypical expenses for the spouse of a nursing home resident in that (1) she still has a mortgage, (2) she visits her husband at a facility that is distant from her residence, and (3) she has her own medical debts from cancer treatment.
7. The petitioner filed this hearing request on February 27, 2012. Due to the statutory jurisdictional limit of 45 days, this Administrative Law Judge's review is limited to the agency's actions for February 1, 2012 forward. Wis. Stat. §49.45(5).

DISCUSSION

Spousal impoverishment is an MA policy, created pursuant to the Medicare Catastrophic Coverage Act of 1988, which allows persons to retain assets and income that are above the regular MA financial limits. Spousal impoverishment policy applies only to institutionalized persons and their community spouses.

After an institutionalized person is found eligible, s/he may allocate some of her income to the community spouse if the community spouse's gross monthly income does not exceed the Maximum Community Spouse Income Allocation of \$2,841.00. See *MA Eligibility Handbook (MEH)*, 18.6.2, online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. In this case, the gross income of the community spouse is \$533. The Department therefore allocated \$1,300.43 from the institutionalized spouse's net income to him as the community spouse.

The community spouse argues that she cannot get by without a larger allocation. The county agency does not have discretion to allocate income to her that would cause her "income plus allocation" total to exceed \$2,841. However, I have some limited discretion and have determined that Ms. [REDACTED] income is short of what she needs to cover basic living expenses. The statute allows the allocation to be raised to avert financial duress, created by exceptional circumstances, for the community spouse. I conclude that the Maximum Allocation must be raised to **\$3,456 for twelve months**, to avert financial duress. Exceptional circumstances are present here: the spouse (1) has mortgage payments, (2) has high costs incurred in visiting

her husband, and (3) has medical debts. See s.49.455(8)(c), Wis. Stats. The acceptable monthly expenses verified by the community spouse are as follows:

Mortgage/tax/HO insurance	1058
Gas/electricity/water	337
Telephone	80
Car/HO insurance	117
Gas (car)	300
Vehicle maintenance	50
Groceries	200
Home maintenance/plow/mow	180
Discover card debt (\$3,929 balance)	
& wife's medical debts (\$8,300 balance)	1019 (combined)
Wife's health ins deductible/copays	150
Haircuts	25
Clothes/toiletries	<u>100</u> (smaller clothes size following cancer treatment)
TOTAL	\$3456.00

In setting the Maximum Allocation at \$3456, I accepted as accurate the budget numbers provided by the community spouse in her exhibits. The county agency may leave this \$3,456 Maximum Allocation in place for twelve months. The higher amount is to allow the petitioner to pay off the Discover card and cancer treatment debts, as there is no benefit to either the petitioner or the Department in having her accumulate exorbitant credit card interest charges over a long period of time.

CONCLUSIONS OF LAW

1. Due to exceptional circumstances, the petitioner's spouse requires \$3,456 to live on for twelve months.

THEREFORE, it is

ORDERED

That the petition for review herein be *remanded* to the county agency with instructions to increase the petitioner's Maximum Community Spouse Income Allocation to **\$3,456.00** effective with the February, 2012, cost of care liability determination. The higher allocation will remain in place through January 31, 2012. This action shall be taken within 10 days of the date of this Decision. In all other respects, 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 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 Madison,
Wisconsin, this 31st day of March, 2012

/s/Nancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals

c:

[REDACTED]