



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MRA-3/1031

81

PRELIMINARY RECITALS

Pursuant to a petition filed March 31, 2009, under Wis. Ad min. Code § HA 3.03(1), to review a decision by the Barron County Dept of Human Services in regard to Medical Assistance, a hearing was held on May 21, 2009, at Barron, Wisconsin.

The issue for determination is whether the petitioner's spouse is entitled to an increase in her income allocation.

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 53702

By: Jaemie Christianson-Fawcett, ESS

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien, Attorney
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) resides in a nursing home in Barron County. His spouse lives in the community.

2. The county agency determined that the petitioner's spouse requires \$2,739 to meet her minimum monthly needs and allocated \$2,171.40 of the petitioner's income to her each month. She requests that this amount be increased.
3. The petitioner receives \$3,161.24 and his wife receives \$567.50 in unearned income each month.
4. The petitioner's spouse did not submit a coherent budget that adequately documented her minimum monthly needs.

DISCUSSION

Medical assistance rules require nursing home residents to "apply their available income toward the cost of their care." Wis. Adm. 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. The minimum monthly maintenance needs allowance currently is the lesser of \$2,739 or \$2,333.33 plus excess shelter costs. *Medical Eligibility Handbook*, § 18.6.2. Excess shelter costs are shelter costs above \$700. *Id.*

The needs allowance can be increased at a fair hearing. Because any additional amount given to the community spouse is a taxpayer-financed subsidy in the form of medical assistance, the law restricts the administrative law judge's ability to raise the limit. Wisconsin law provides the following test for the exception:

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's monthly income allowance under sub. (4)(b).

Wis. Stat. § 49.455(8)(c).

Thus a hearing officer may increase the maximum allocation ceiling only by amounts needed to allow the community spouse to avoid financial duress and to meet necessary and basic needs. This means that certain expenses that are for desirable things are rejected. For example, the Division of Hearings and Appeals has long and consistently denied donations, including those to a church. *See, e.g., DHA Decision Nos. M RA-45/#22021, M RA-32/22456, M RA-05/37611, MRA-13/45972, and MRA-14/22543.*

It is up to the petitioner and his spouse to prove that she requires an additional allocation. His spouse provided a list of the expenses she incurred in the last month. The problem is that despite a good deal of effort I can not figure out what her monthly needs are. The list has her husband's expenses mixed in here and there. It includes some items that are meant to last for less than a month and others for longer. I am aware that the petitioner and her husband must pay off a great deal of debt, but until they present a clearer budget I cannot set an allocation based upon anything more than a glorified guess. Because the law demands more than this, I must deny the petitioner's request to increase his allocation to his wife. I note that nothing prevents them from filing a new request if they can put together a better budget.

CONCLUSIONS OF LAW

There is insufficient information to determine the minimum monthly needs of the petitioner's spouse.

ORDERED

That the petition herein be and the same hereby 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 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 Eau
Claire, Wisconsin, this _____ day of
_____, 2009

Michael D. O'Brien, Attorney
Administrative Law Judge
Division of Hearings and Appeals

[REDACTED]