



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MRA/139500

PRELIMINARY RECITALS

Pursuant to a petition filed March 09, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by Wood County Human Services - WI Rapids in regard to spousal income allocation under Medical Assistance, a telephone hearing was held on April 12, 2012.

The issue for determination is whether the petitioner's community spouse, [REDACTED] is entitled to an increase in her spousal income allocation.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Tanya Kilty, Northern Income Maintenance Consortium
Wood County Human Services - WI Rapids
320 West Grand Avenue
PO Box 8095
Wisconsin Rapids, WI 54495-8095

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is an institutionalized resident of Wood County. His wife [REDACTED] lives in the community.

2. Effective on or about January 1, 2012, the petitioner became eligible for Long Term Care – Medical Assistance coverage of the cost of his institutionalization.
3. █████ gross monthly income is comprised of \$1,689.00 in Social Security benefits and \$1,409.09 in pension or retirement benefits. The county agency determined that █████ gross income is comprised of \$723.00 in Social Security benefits and \$208.12 in pension or retirement benefits.
4. On February 3, 2012, effective January 1, 2012, the petitioner's patient liability was determined by the agency to be \$1,405.07 per month; this amount was corrected on or about April 12, 2012, and calculated as \$1,015.74 (petitioner's gross income of \$3098.09, less personal needs allowance of \$45.00, less community spouse income allocation of \$1909.66, less health insurance cost of \$127.00).
5. In the agency computation, the maximum income allocation of \$2,841.00 was reduced by █████ gross income of \$931.12, and therefore the income allocated to █████ was \$1,909.88. Exhibit 4, p. 2.
6. On March 9, 2012, petitioner and his community spouse filed an appeal with the Division of Hearings & Appeals seeking an increase in her community spouse income allocation, retroactive to January 1, 2012, to an amount above the current maximum of \$2,841.00.
7. █████ necessary monthly expenses, as asserted, total approximately \$3,608 per month, as listed in the table below:

MONTHLY EXPENSE	AMOUNT (Rounded)
Mortgage	\$970
Home Equity	\$200
Gas & Electric Utility (We Energies 131.51; Adams Electric 87.67)	\$219
Car Payment	\$102
Mobile Phone	\$ 47
Gasoline	\$253
Car Insurance	\$ 86
Food	\$426
Cable TV/Internet/Telephone	\$169
Uncovered Medical Expenses	\$450
Life Insurance Prem. (█████ - ~\$72, monthly; █████ \$14, monthly)	\$ 86
Visa Credit Card (Bal. Due \$8,000-9,000)	\$200
JC Penney Credit Card (Bal. Due \$insignificant)	\$ 50
Citi Credit Card (Bal. Due \$1,800)	\$125
Federal Tax	\$ 40

Health Insurance Premium	\$ 127
Home Insurance Premium	\$ 58
TOTAL:	\$3,608

DISCUSSION

Wis. Stat. § 49.455 is the Wisconsin codification of 42 U.S.C. § 13964-5 (MCCA). Among other things, the "spousal impoverishment" provisions at Wis. Stat. § 49.455 direct the Department to establish an income allowance for the community spouse of an institutionalized person. The maximum allowance set by the county is \$2,841 per month, as directed by MA policy. See, Medicaid Eligibility Handbook, Appendix 18.6.2. The institutionalized person may divert some of his income to his community spouse rather than contributing to his own cost of care. The amount of the diverted income, when combined with the spouse's income, cannot exceed the maximum allowance 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 institutionalized 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.

The petitioner seeks the allocation retroactive to January 1, 2011. I have reviewed the expenses for petitioner's wife. The standard for raising the income allowance is whether, due to exceptional circumstances that could result in financial duress, she needs additional income on top of the maximum allocation already allowed to her. Thus, my job is not just to look at her expenses, but expenses that might cause financial duress due to exceptional circumstances.

After consideration of this record, I have determined that [REDACTED] basic monthly maintenance expenses are \$3,608.00. The petitioner provided a detailed accounting of all of her income and expenses for the month of February, 2012. The items included in Finding of Fact 7, above, constitute those expenses that must be paid each month to avoid financial duress. Certain items are not included or counted due to [REDACTED] testimony at hearing that certain of her itemized expenses were one-time expenses; others were not counted as they are not necessary to meet her basic needs.

Petitioner testified in a clear, consistent and very credible manner that the reported income amounts and expenses represent her actual monthly income and expenses. I found her to be truthful and very credible, and will allow them in this initial instance. (Should the petitioner have a future such income allocation hearing, she is advised that she is expected to again bring a legible written list of her monthly expenses and amounts, and would further be well-advised to bring a packet of copies of the bills for these items.) I

will order the county to increase the community spouse's maximum income allowance, however, to \$3,608 and increase her community spouse income allocation accordingly from \$1,909.66 to \$2,676.88, retroactive to January 1, 2012, and continuing until December 31, 2013. At that time, the agency may review the situation under the standard spousal income allocation procedures. If she again disagrees, she may file a new appeal at that time.

CONCLUSIONS OF LAW

Petitioner's community spouse needs \$3,608.00 in monthly income each month retroactive to January 1, 2012, to avoid financial duress.

NOW, THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to: reduce the petitioner's patient liability to \$249.21 per month (petitioner's gross income of \$3,098.09, less personal needs allowance of \$45.00, less community spouse income allocation of \$2,676.88, less health insurance cost of \$127.00); increase [REDACTED] maximum monthly income need allowance to \$3,644.00; and increase [REDACTED] community spouse income allocation to \$2,676.88, the maximum allowed under her new maximum monthly income need, **all actions retroactive to January 1, 2012**, and continuing through December 31, 2013, at which time her allocation is to be tested again as otherwise directed by departmental written spousal income policy. **IT IS FURTHER ORDERED**, that the agency is to refund to the community spouse all amounts of patient liability over-withheld from the petitioner under the terms of this ORDER, retroactive to January 1, 2012. These actions shall be completed 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 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 24th day of May, 2012

/sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals

c:

[REDACTED]
[REDACTED]