



**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**DECISION**  
Case #: MRA - 220384

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on October 9, 2025, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Dodge County Human Services regarding Medical Assistance (MA), a hearing was held on November 26, 2025, by telephone.

The issues for determination are: (1) whether the agency correctly found that Petitioner’s income allocation to her community spouse, who is enrolled in Family Care, must be counted when assessing his eligibility for Family Care and when calculating his cost share, and (2) whether Petitioner, who receives Institutional Medical Assistance, may increase her income allocation to her spouse so as to assist him with his living expenses (and thereby reduce her patient liability).

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**

**Petitioner's Representative:**

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**Respondent:**

Department of Health Services  
201 E. Washington Ave.  
Madison, WI 53703  
By: Nathaniel Whitaker  
Dodge County Human Services  
199 Cty Rd DF  
Juneau, WI 53039

**ADMINISTRATIVE LAW JUDGE:**  
Teresa A. Perez  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a married resident of [REDACTED], a skilled nursing facility located in Jefferson County.
2. Petitioner has been eligible for Institutional Medical Assistance since June 2023.
3. Since becoming eligible for Institutional Medical Assistance, Petitioner requested that the maximum possible amount of income that she received in her own name be allocated to [REDACTED].
4. Petitioner's spouse, [REDACTED], became eligible for Community Waivers Medical Assistance and enrolled in Family Care in December 2023, at which time he was residing in the community. From an unknown date through at least the date of the hearing in this matter, [REDACTED] was residing in a skilled nursing facility.
5. In June 2025, [REDACTED] completed a Community Waivers renewal at which time the agency observed that it had, in error, not counted the spousal income allocation he received when calculating his Family Care cost share. As a result, he had not previously been assessed any cost share.
6. After processing Petitioner's and her spouse's 2025 renewals, the agency decreased Petitioner's spousal allocation to avoid significantly increasing [REDACTED]'s cost share. As a result, Petitioner's patient liability increased from \$36.60 in July 2025 to \$1,735.60 in August 2025.
7. If Petitioner continued allocating the maximum amount of income possible to her spouse, his cost share would have increased to \$1,698.53 as of August 1, 2025.
8. On October 9, 2025, Petitioner filed a request for fair hearing.

### DISCUSSION

The business manager from the skilled nursing facility where Petitioner resides appeared on her behalf at hearing. She explained that, prior to the hearing, she had not received a clear explanation regarding the significant increase in Petitioner's patient liability as of August 2025. She was therefore, in large part, simply looking for information. At hearing, the agency explained that it reduced Petitioner's spousal income allocation so as to avoid increasing her spouse's cost share.

The agency contended that an institutionalized spouse is prohibited from allocating any amount to a community spouse if that amount will cause an increase in the community spouse's cost share. The agency provided no citation to support this contention, and I was unable to locate any. Nevertheless, I concur with the agency that a spousal income allocation must be counted when determining a community spouse's eligibility for Family Care because all gross income must be counted. See *Medicaid Eligibility Handbook* §28.6.2. I also concur that an income allocation from an institutionalized spouse to a community spouse must be counted when calculating the community spouse's Family Care cost share. Deductions that are permitted when calculating a Family Care enrollee's cost share are set forth in *Medicaid Eligibility Handbook* §28.6.3 - 28.6.3.5. And, spousal income allocations that a community spouse receives from an institutionalized spouse are not among those permissible deductions.

Although I do not know the source of the agency's contention that an institutionalized spouse may not allocate income to a community spouse if an allocation would cause an increase in the community spouse's cost share, the fact of the matter is that if Petitioner were to increase her allocation, her spouse would have more countable income and his cost share would thus increase. In other words, an increased allocation would decrease Petitioner's patient liability but would not achieve her objective--to provide more money to her spouse to use for his living costs.

Finally, I note that although the Division of Hearings and Appeals has authority to order an increased spousal allocation to a spouse who resides in the community under certain circumstances, the Division of Hearings and Appeals does not have authority to order a Family Care cost share that does not comport with the calculation instructions set forth in relevant policy.

### CONCLUSIONS OF LAW

- (1) The agency correctly determined that Petitioner's spousal income allocation must be counted when determining her community spouse's eligibility for Family Care and when calculating her community spouse's cost share.
- (2) Petitioner may not make more money available to her community spouse to use on his living expenses by increasing her spousal allocation because any such increase will cause his Family Care cost share to increase.

**THEREFORE, it is**

**ORDERED**

Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

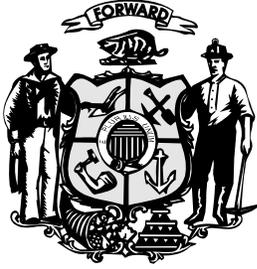
### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 201 E. Washington Ave., **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 7th day of January, 2026

\s \_\_\_\_\_  
Teresa A. Perez  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 7, 2026.

Dodge County Human Services  
Division of Health Care Access and Accountability