



FH
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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: MRA - 223077

PRELIMINARY RECITALS

Pursuant to a petition filed on April 28, 2026, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Polk County Department of Social Services regarding Medical Assistance (MA), a hearing was held on June 10, 2026, by telephone.

The issue for determination is whether the agency should allocate additional income to the petitioner's community spouse.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

Attorney Benjamin S. Wright
Wright Elder Law
PO Box 375
New Richmond, WI 54017

Respondent:

Department of Health Services
201 E. Washington Ave.
Madison, WI 53703

By: K. Burstad

Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

John Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of St. Croix County.
2. Petitioner is a resident of Dane County and resides in a nursing home.
3. Petitioner's cost of institutional care is \$10,708 per month.
4. Petitioner's total monthly gross income is \$4,817.
5. Petitioner is enrolled in institutional Medicaid.
6. Petitioner's community spouse is 86 years old and has average monthly gross income of \$3,814 per month from pension and Social Security and a promissory note.
7. The agency determined that it should allocate \$251.86 of petitioner's income to the community spouse.
8. As set forth more fully in the hearing record, including detailed itemization in petitioner's exhibits, payment of expenses in the monthly amount of \$4802.37 are basic and necessary for the maintenance of the community spouse.
9. Currently the amount of income allocated from petitioner to the community spouse is \$251.86.
10. The current maximum income allocation to the community spouse is the maximum \$4,066.50/mo.

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, he may allocate some of his income to the community spouse if the community spouse's gross monthly income does not exceed the Maximum Community Spouse Income Allocation (CSIA) of \$4,066.50. See *Medicaid Eligibility Handbook* § 18.6.2. In this case, the income of the community spouse is \$3,814 per month.

The petitioner argues that due to the community spouse's health care costs she cannot get by on the \$4,066 CSIA for herself. The county agency does not have discretion to allocate income to her that would cause her "income plus allocation" total to exceed \$4,066. However, I have some limited discretion. The statute allows the allocation to be raised by an administrative law judge *to avert financial duress, created by exceptional circumstances*, for the community spouse. See Wis. Stat. § 49.455(8)(c). The Administrative Code explains that "'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). The Medicaid Eligibility Handbook explains that "A court or fair hearing can increase the community spouse income allocation if it determines the spouse is not able to provide for his or her necessary and basic maintenance needs with the amount allocated." *MEH* at 18.6.2. The purpose of the additional income allocation is to ensure that the spouse does not become impoverished, that she has enough to eat and maintain a shelter, and then some. This, of course, is not the same as the amount needed to maintain the same lifestyle as before the spouse entered the facility and sought Medicaid funding.

I find that the health costs of the community spouse require additional allocation of petitioner's income to the community spouse in order to avoid duress. The majority of the itemized expenses reflected in the exhibits by petitioner was supported and reasonable. Expenses related to maintaining the residence, transportation, health care and insurance are all appropriate a reasonable based on the record and will allow nearly all of what it requested by petitioner.

However, I find that some of the itemized expenses are not necessary and basic maintenance needs. I find that various itemized expenses are luxuries. I bear in mind with such requests that the funds sought by petitioner to pay these expenses are indirectly sourced from a public benefit program. I must also consider whether the expenses are so necessary that they cannot be forgone by the community spouse in order for the community spouse to avoid financial duress.

Considering this analysis, I find the request for funding of a \$250 monthly contribution to savings to not be basic or necessary for the community spouse's needs. Medicaid need not indirectly fund family savings which may ultimately be left to heirs. Similarly, life insurance (\$49 monthly) and a home security system (\$56.61 monthly) may give peace of mind, but neither is a basic and necessary expense. A cell phone and cellular plan (\$89.65 monthly), while ubiquitous in 2026, is not basic and necessary for a person who also has a landline telephone. That is the case here. Clothing purchases at \$50 per month are also not basic or necessary. These expenses are omitted from my increased allowance.

Other expenses for which the community spouse seeks funding are excessive and I am reducing the allowance from what was requested.

- Pet-related expenses at \$125 per month is both excessive and not adequately documented. I find \$40 per month to be allowable based on the evidence in this record.
- Haircuts and personal care at \$200 per month is excessive and not adequately documented. I find \$50 per month to be allowable based on the evidence in this record.

I will allow the remaining itemized expenses (see Petitioner's Appendix 1) sought by petitioner as they are basic and necessary for the community spouse. This results in a total calculation of basic and necessary expenses at 4,802.37. That amount ensures that the spouse does not become impoverished, that she has enough to eat and maintain a shelter, and pay for his own health care needs. That is what the statute calls for.

Based on this, the new income allowance should be set at \$4,802.37. The allocation from petitioner to the community spouse should be increased to reach this income plus allocation number.

Finally, as an aside, if petitioner is no longer driving then petitioner may wish to be removed from the auto insurance policy.

CONCLUSIONS OF LAW

Petitioner has established that an increase in the CSIA is necessary to avoid duress.

THEREFORE, it is ORDERED

That this matter is remanded to the agency with the following instructions:

1. The agency shall increase the community spouse's income allocation to reach the amount of **\$4,802.37** effective as of the institutional admission date.

These actions shall be completed within 10 days of the Decision.

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, 5th 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 22nd day of July, 2026

\s _____
John Tedesco
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 July 22, 2026.

Polk County Department of Social Services
Division of Health Care Access and Accountability
Attorney Benjamin Wright