



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

In the Matter of



DECISION

MRA-55/103

960

PRELIMINARY RECITALS

Pursuant to a petition filed May 01, 2009, under Wis. Admin. Code § HA 3.03(1), to review a decision by the St. Croix County Department of Human Services in regard to Medical Assistance, a hearing was held on June 22, 2009, at New Richmond, 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: Heather Gensen, ESS

St. Croix County Department of Human Services
1445 N. Fourth Street
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) resides in St. Croix County. His spouse resides in the community.
2. The petitioner entered the nursing home on February 25, 2009, and has been eligible for medical assistance since then.
3. The county agency determined that, based upon her housing costs, the petitioner's spouse requires \$2,739 per month to meet her minimum monthly needs. She requests that this amount be raised to \$4,090.
4. The petitioner and his spouse own dwellings in Wisconsin and Minnesota. The Minnesota dwelling has been for sale for two years. Until it sells, they must pay a \$1,631 association fee or lose the property. The association sets the minimum price that they can sell it for.
5. The petitioner and her husband pay \$918.47 each month for their mortgage, property taxes, and association fees on the River Falls home.
6. The petitioner's spouse requires \$1,540.53 in addition to her housing costs to meet her minimum monthly needs. This amount does not include any donations, presents, or entertainment expenses. *Exhibit 1.*

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.*

The petitioner's spouse requests that her allowance be raised to \$4,090 per month. She and her husband moved back to River Falls from a condominium in another city to be closer to their

family after he developed Alzheimer's disease. They planned to sell their condominium to pay for the River Falls house, but the real estate market crashed, leaving them with \$918.47 in monthly mortgage payments, property taxes and association fees on the River Falls home and \$1,631 in monthly association fees on the condominium. If they fail to pay the association fees, they will lose the condominium and not receive anything for it when it eventually sells. Selling the condominium has been difficult because, besides the poor market, the condominium association sets the minimum sale price. Based upon this, I find that paying this fee is part of the spouse's minimum monthly needs.

I have also reviewed the other expenses and find them reasonable. Including the River Falls housing costs, they are \$2,459, or nearly \$280 less than the county found the petitioner's spouse needs to meet her minimum monthly needs. *Exhibit 1*. These expenses do not include any donations or presents, or even entertainment for the spouse. They are also thoroughly documented. Based upon this I will allow her allowance to be raised to \$4,090 as she requests.

CONCLUSIONS OF LAW

The petitioner's wife requires \$4,090 each month to avoid financial duress.

ORDERED

That this matter is remanded the county agency with instructions that within 10 days of the date of this decision it set the petitioner's spouse minimum monthly needs allowance at \$4,090 when determining how much of the petitioner's monthly income may be allocated her. This decision shall be retro active to February 25, 2009, the date the petitioner entered the nursing home and was found eligible for medical assistance.

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

c:

[REDACTED]