



STATE OF WISCONSIN
DEPARTMENT OF HEALTH AND SOCIAL SERVICES

In the Matter of

DECISION
MRA-67/81998

P R E L I M I N A R Y R E C I T A L S

Pursuant to a petition filed May 6, 1994, under sec. 49.45(5), Wis. Stats., to review a decision by the Waukesha County Community Human Serv. Dept. to reduce Medical Assistance (MA), a hearing was held on June 17, 1994, at Waukesha, Wisconsin.

The issues for determination are whether the petitioner's wife's gross income must be used when determining her community spouse monthly income and whether assets may be reallocated to the petitioner's wife to increase her income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST: Petitioner:

Wisconsin Dept. of Health & Social Services
Bureau of Welfare Initiatives
1 W. Wilson St., Room 350
P.O. Box 7851
Madison, WI 53707-7851
By: Linda Konsella, Leadworker
Waukesha County Community Human Serv. Dept.
500 Riverview Avenue
Waukesha, WI 53186

EXAMINER: David D. Fleming, Attorney
Department of Health & Social Services

F I N D I N G S O F F A C T

1. That the petitioner (SSN [redacted]) is a resident of Waukesha County. He is married to [redacted] and is a resident of a nursing home located in Waukesha County. He is certified for MA.
2. That the petitioner's wife applied for MA on behalf of her husband and also requested that an income allocation be completed. By notice dated March 25, 1994 the request that income be allocated was denied by the county agency.
3. That the petitioner has total monthly income of \$2359.38 from a pension plan and a deferred compensation plan.
4. That the petitioner's wife has gross monthly income of \$1836.80.
5. That [redacted] has identified expenses for herself totaling \$2282.42 per month.
6. That [redacted] needs can be met at an income level of \$1802.42 per month.

D I S C U S S I O N

Spousal impoverishment regulations allow an increase in the monthly community spouse income allocation by order of a fair hearing examiner or a court. § 49.455(4)(b), Wis. Stats.; MA Handbook, App. 23.6.0 (01-01-94). In order to increase that allocation, the examiner must find exceptional circumstances resulting in financial duress. § 49.455(8)(c), Wis. Stats. The examiner must conclude that the community spouse "... isn't able to provide for his/her necessary and basic maintenance needs with the amount allocated." MA Handbook, App. 23.6.0. (01-01-94) (Emphasis added). In 1994 the "Community Spouse Income Allocation" is \$1816.50 per month. MA Handbook, App. 23.6.0.

Under § 49.455(6)(b)3, Wis. Stats., resources may be reallocated through the fair hearing process to raise the community spouse's income to the minimum monthly maintenance needs allowance.

Spousal impoverishment cases have two general components which result in the spousal allocation: 1) the community spouse's income computation and 2) the community spouse's basic maintenance needs computation.

The petitioner's spouse seeks to have resources (the petitioner's deferred compensation plan) allocated to her so as to provide her with monthly income in excess of the maximum allowed under § 49.455(4)(a)2, Wis. Stats. In this case there is no dispute about the gross income of the community spouse. The petitioner's spouse contends, however, that after deductions, particularly taxes, her take home income is not sufficient to meet her expenses. She anticipates that this situation will only worsen when she retires. The MA Handbook and the

Wisconsin Administrative Code both indicate, however, that gross income is to be used. MA Handbook, Appendix 23.6.0; HSS 103.075(6)(b), Wis. Adm. Code.

Turning to the community spouse's basic needs computation, I have reviewed the community spouse's budget as listed in Exhibit # 2. While it is a typical middle income household's family budget, and as such is modest and reasonable, several expenses are not "basic maintenance needs" of the community.

I conclude that the following monthly expenses, noted on page two of EXHIBIT # 2, are to be excluded because they are not basic maintenance needs of the community spouse; haircut/etc (\$70.00), gifts (\$50.00), cable (\$30.00), news/mag (\$20.00), theater (\$40.00), church (\$125.00), cleaning (\$20.00) and eat out (\$75.00). Finally, the \$1200.00 annual for clothing (\$100.00 per month) is scaled back to \$50.00 per month. These excluded non-basic and/or non-community spouse expenses total \$480.00. The petitioner's spouse indicated that her total monthly expenses were \$2,282.42. After subtracting the excluded expenses, I find that her actual community spouse basic needs maintenance expenses total \$1,802.42. ($\$2,282.42 - \$480.00 = \$1,802.42$). Her gross income, as determined here, is sufficient to meet her basic needs maintenance, and I find that this situation does not constitute financial duress as contemplated in § 49.455, Wis. Stats.; HSS 103.075, Wis. Adm. Code and the MA Handbook, App. 23.6.0 (01-01-94). The county agency correctly denied the petitioner's request for reallocation.

C O N C L U S I O N S O F L A W

1. That gross income must be used when determining the monthly income of the community spouse.
2. That the petitioner's community spouse has not demonstrated exceptional circumstances resulting in financial duress and is not, therefore, entitled to an increase in her community spouse income allocation.

NOW, THEREFORE, it is

O R D E R E D

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to Office of Administrative Hearings, 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 must explain what mistake the examiner 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.

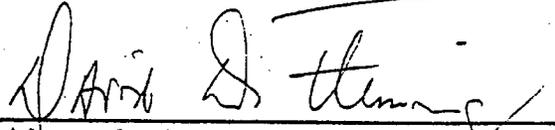
Your request for a new hearing must be received no later than 20 days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in Sec. 227.49 of the state statutes. A copy of the statutes can be found at your local library or courthouse.

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). The appeal must be served on the Department of Health and Social Services as respondent, P. O. Box 7850, Madison, WI 53707-7850.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in Sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 25TH
day of JULY, 1994.



David D. Fleming, Attorney
DEPARTMENT OF HEALTH & SOCIAL SERVICES
07-18-94 DDF

cc: Petitioner
Waukesha Co. Comm. HSD
John A. Bernardi, Atty.
Digest