



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-30/70187

PRELIMINARY RECITALS

Pursuant to a petition filed May 25, 2005, under Wis. Stat. § 49.45(5) and Wis. Adm. Code § HA 3.03(1), to review a decision by the Kenosha County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on July 21, 2005, at Kenosha, Wisconsin.

The issue for determination is whether a portion of the petitioner's income should be "allocated" (disregarded) under spousal impoverishment provisions.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:
(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Loren Fox, ESS Supr. and Roberta Bloner, ESS
Kenosha County Human Service Dept
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Peter D. Kafkas
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Kenosha County.
2. Petitioner is certified for institutional MA.
3. On May 25, 2005, the county agency issued an initial written notice to the petitioner advising that petitioner would have to contribute \$425.72 toward petitioner's nursing home care expense (the balance is paid for by MA) effective May 1, 2005. See Exhibits 1A.

4. Petitioner had Social Security income of \$1,451.00. He had a pension in the amount of \$829.22. The petitioner has a spouse residing in a private residence. Petitioner's spouse had gross monthly income of \$559.00 (Social Security). Because petitioner's spouse's income did not exceed the maximum allocation amount, the Department automatically subtracted her income from the \$2,319 allocation maximum, for a difference of \$1,818.50. This \$1,818.50 difference was the amount of the institutionalized spouse's income that was then "allocated" to petitioner's wife.
5. The petitioner had gross monthly income of \$2,289.22. After subtraction of the \$45 statutory personal allowance and the spousal allocation, the Department determined that the petitioner had \$425.72 available to contribute toward the cost of his nursing home care.
6. Petitioner's spouse has identified living expenses totaling \$2,709.46. See Exhibit 2.
7. Of the monthly expenses referred to in Finding #5, all are reasonable, basic and necessary living expenses, except for \$38.00 of cable telephone services (\$15.00 is allowable), cellular service in the amount of \$45.65, \$27.00 of telephone service (\$29.00 is allowable), and \$100.00 of approximated medical expenses without documentary support.

DISCUSSION

Spousal impoverishment is an MA policy, created pursuant to the Medicare Catastrophic Coverage Act of 1988, that 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 of \$2,377.50. See MA Eligibility Handbook (MEH), 5.10.6. In this case, the income of the community spouse was \$559.00. The Department therefore allocated \$1,818.50 from the institutionalized spouse's net income to make up the difference between the Maximum Allocation and the community spouse's income.

The community spouse argues that she cannot get by on the \$2,377.50 Maximum Allocation. The county agency does not have discretion to allocate income to her that would cause her "income plus allocation" total to exceed \$2,377.50. However, I have some limited discretion and have determined that petitioner's wife's income is short of what she needs to cover basic living expenses. The statute allows the allocation to be raised to avert financial duress, created by exceptional circumstances, for the community spouse. I conclude that the Maximum Allocation must be raised to \$2,498.81 to avert financial duress. The monthly expenses identified by the community spouse are as follows:

UTILITIES

Gas and electric	\$278.61
Water	\$47.50
Cable	\$53.00
Telephone	\$53.00
Cellular phone	\$56.00

HOME

Mortgage	\$554.99
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Insurance	\$65.92
Property Tax	\$185.23
Maintenance	\$425.00
AUTOMOBILE	
Automobile gas	\$120.00
Service	\$51.67
Insurance	\$65.00
Registration	\$4.58
AAA	\$6.67
MEDICAL	
Doctor	\$100.00
Hospital/Clinic	\$50.00
Pharmacy	\$100.00
OTHER EXPENSES	
Groceries	\$300.00
Clothing	\$50.00
Miscellaneous	<u>\$150.00</u>
TOTAL LISTED EXPENSES	<u>\$2,709.46</u>

See, Exhibit 2. Petitioner, by his representative, bears the burden of demonstrating that income should be allocated to petitioner's spouse. Petitioner has submitted sufficient documentation to justify most of the expenses petitioner listed in Exhibit 2. Some, however, must be disallowed or adjusted.

The \$53.00 cable bill is questionable. Most areas have free television signals broadcast over the airwaves. Some areas do have some difficulty with reception, and some television service is necessary, at least for emergency purposes. But most cable companies allow a standard package of local stations for approximately \$15.00 per month. \$15.00 is being allowed for cable services for petitioner's spouse. Petitioner's total expenses are being adjusted by \$38.00 (\$53.00 minus \$15.00).

Petitioner has listed both a telephone and a cellular phone for his spouse, so the \$56.00 monthly cellular phone amount shall not be allowed. Also, a standard \$29.00 amount is typically allowed for telephone usage under many government assistance programs. Petitioner's expenses are being adjusted by \$27.00 in the standard telephone area (\$56.00 minus \$29.00 is \$27.00).

And petitioner's spouse's medical bills are not sufficiently supported by documentation. The testimony at hearing was that petitioner has very good health insurance. A rounded, approximated, \$250.00 per month of out of pocket expenses cannot be approved at this time. The medical expense amount is being adjusted to a total of \$150.00. So petitioner's expenses are being reduced by \$100.00.

Other than these adjustments, petitioner's spouse's expenses are found to be a reasonable, and so the community spouse's expenses are being approved at \$2,498.81 (\$2,709.45 total listed expenses minus \$45.65 for the cellular bill minus \$27.00 for the standard telephone service minus \$38.00 for the cable bill minus \$100.00 in the medical bill area). This is the new Maximum Community Spouse Income Allocation – which will be reduced by petitioner's spouse's income of \$559 to determine the amount of income that will be allocated from petitioner to the petitioner's spouse.

This was a close case in many respects. The applicable rules allow for increases in income allocation in **exceptional circumstances** to **avoid financial duress**. In particular, little justification was provided in the form of documentary evidence for the listed medical expenses. In the future, such bills possibly may not be approved - particularly, if no copies of medical bills are submitted. There was just barely sufficient evidence and testimony available to support the \$150.00 figure approved above.

CONCLUSIONS OF LAW

Due to exceptional circumstances, the petitioner's wife requires a \$2,498.81 Maximum Community Spouse Income Allocation.

NOW, THEREFORE, it is **ORDERED**

That the petition for review herein be remanded to the county agency with instructions to take the administrative steps necessary to: increase petitioner's spouse's in Maximum Community Spouse Income Allocation to \$2,498.81 effective with the May 1, 2005, cost of care liability determination. The county agency shall take the administrative stops ordered above on or before September 20, 2005. In all other respects, the petition is 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 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 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 twenty (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 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 thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

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
Milwaukee, Wisconsin, this _____
day of _____, 2005.

Peter D. Kafkas
Administrative Law Judge
Division of Hearings and Appeals
107/PDK