



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-30/76733

PRELIMINARY RECITALS

Pursuant to a petition filed May 1, 2006, 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 June 19, 2006, at Kenosha, Wisconsin.

The issue for determination is whether petitioner's community spouse income allocation can be increased.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Respondent:

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: Lauren Fox, ESS Sup.
Roberta Bloner, ESS
Kenosha County Human Service Dept
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Marina Croft
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #xxxxxxxxxx) is a resident of Kenosha County.
2. Petitioner resides in a nursing home. His wife resides in the community.

3. On May 2, 2006, the county agency sent a notice to petitioner informing him that he was eligible for Institutional MA, but he had a monthly cost of care of \$372.41.
4. Petitioner's wife has a Maximum Monthly Income Allowance of \$2,488.50
5. Petitioner's wife has a monthly gross income of \$575.
6. Petitioner's wife was given a monthly income allocation of \$1,923.81.

DISCUSSION

Wisconsin Statutes § 49.455 is the Wisconsin codification of 42 U.S.C. s.13964-5 (MCCA). Among other things, the "spousal impoverishment" provisions at sec. 49.455 direct the Department to establish an income allowance for the community spouse of an institutionalized person. That allowance set by the county, based upon petitioner's housing costs, is \$2,144.69. See MA Handbook, Appendix 5.10.6; the lesser of \$2,488.50 or \$2,138.33 plus excess shelter costs is the maximum amount of the community spouse allowance. The institutionalized person may divert some of his income to his community spouse rather than contributing to his cost of care. The amount of the diverted income, when combined with the spouse's income, cannot exceed the maximum allocation determined by the county. Any income of the institutionalized spouse that is not allocated to the community spouse or the personal needs allowance must be paid to the nursing home as the person's cost of care share.

A fair hearing officer can grant an exception to this limit on income diversion. The hearing officer may increase the income allowance following a fair hearing. The hearing officer does not have unfettered discretion in creating an exception to the maximum allocation ceiling, however. The relevant statutory provision states that the test for exception is as follows:

(c) 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 monthly income allowance under sub. (4)(b).

Wis. Stat., §49.455(8)(c), emphasis added. Thus a hearing officer may augment the maximum allocation ceiling only by amounts needed to alleviate financial duress, to allow the community spouse to meet necessary and basic maintenance needs.

If an expense is not considered a necessary and basic living expense, it cannot be included in the list of allowable expenses. To determine whether an expense is necessary and basic, a hearing officer looks at whether the expense is either mandatory (e.g., income tax) or essential for survival (e.g., food).

At hearing, petitioner's representative presented the following monthly expenses:

UTILITIES

Gas and electric	\$339.76
Water	\$42.94
Cable	\$136.97
Telephone	\$51.60
Cellular phone	\$46.57

HOME

Mortgage	\$599.99
Insurance	\$68.67
Property Tax	\$182.29
Maintenance	\$370.83

AUTOMOBILE

Automobile gas	\$200.00
Service	\$51.67
Insurance	\$76.52
Registration	\$4.58
AAA	\$6.67

MEDICAL

Doctor	\$30.00
Hospital/Clinic	-
Pharmacy	\$30.00

OTHER EXPENSES

Groceries	\$782.27
Clothing	\$50.00
Church	\$50.00
Subscriptions (Kenosha News & People)	<u>\$26.82</u>

TOTAL LISTED EXPENSES \$3,148.14

See, Exhibit 9. 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 9. However, some expenses must be disallowed and/or adjusted.

The \$136.97 cable bill is questionable. Petitioner has submitted documentation to establish that two cable services are needed, one for petitioner and the other one for his spouse. Although most areas have free television signals, some areas do have some difficulty with reception and some television service is necessary, at least for emergency purposes. However, most cable companies allow a standard package of local stations for approximately \$15.00 per month. \$30.00 is being allowed for cable services for petitioner

and his spouse. Petitioner has listed both a telephone and a cellular phone expense. A standard \$25 amount is typically allowed for telephone usage. The \$46.57 monthly cellular phone amount will not be allowed. Thus, petitioner's utility expenses will be adjusted to \$437.70.

Petitioner's representative explained that the following expenses are necessary for home maintenance:

Trugreen/Chemlawn	\$18.47
Terminix	\$29.17
Lawn care	\$60.00
Snow removal	\$15.00
Miscellaneous	\$100.00
Paint house	<u>\$166.00</u>
Total Home Maintenance	\$370.83

However, petitioner's wife testified that she lives in a duplex and that one of her sons lives in the second unit. She also indicated that he helps with the home maintenance as well as assisting with petitioner's care in lieu of paying rent. I find questionable that petitioner chose to contract home maintenance needs such as fertilizing, general lawn care, and snow removal, when there is someone available in the house already providing these services. These contracted services will not be allowed. Similarly, unknown expenses (miscellaneous) and/or future expenses (paint house) cannot be allowed. Petitioner's home maintenance expenses will be adjusted to \$0.

Petitioner's wife's medical and pharmacy expenses are not supported by documentation and as such, will not be allowed. Petitioner's medical expenses are being reduced to \$0.

The \$782.27 grocery expense is outrageous. Petitioner's representative provided numerous grocery bills (Exhibit 10 – May bills total \$307.56; June bills total \$467.11) in support of this expense. Petitioner's wife explained that she brings her husband home during the day, but that his visits are now less frequent as it is becoming increasingly difficult to bring him home. She also testified that additional family regularly eats at her home, and that the son that lives in the second unit also has his meals there, though she clarified that the referenced expenses were solely for her and her husband. The bills presented suggest that petitioner's wife goes to the grocery store every other day, and sometimes twice in the same day, as some of the dates in the receipts coincide. (Exhibit 10). I find hard to believe that two people may have such a large grocery bill. Therefore, petitioner's grocery bill will be adjusted to petitioner's last year grocery expenses \$300.

Further, I cannot allow an increase for church donations and newspaper and magazine subscriptions. This office has long held that those two expenses are not necessary in terms of causing financial duress.

This was a close case in many respects and I am hesitant to grant an increase in income allocation. The applicable rules allow for increases of income allocation in *exceptional circumstances to avoid financial duress*. Nevertheless, the community spouse's expenses are being approved at \$1978.08 (3,148.14 total listed expenses minus \$106.97 for the cable bill, minus \$26.60 for the phone bill, minus \$46.57 for the cell phone bill, minus \$370.83 for the home maintenance, minus \$60 for the medical and pharmacy expenses, minus \$482.27 for the grocery bills, minus church contributions \$50, minus subscriptions \$26.82).

CONCLUSIONS OF LAW

Petitioner's community spouse income allocation can be increased to \$1978.08.

NOW, THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to increase the monthly income allocation of petitioner's wife to \$1978.08 retroactive to May 1, 2006. The county shall take the action within 10 days of this decision.

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 must be served on the 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 3rd day of
July, 2006

/sMarina Croft
Administrative Law Judge
Division of Hearings and Appeals
824/MC