



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MRA/154634

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 7, 2014, under Wis. Stat., § 49.455(8), to review a decision by the Marathon County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on February 26, 2014, by telephone.

The issue for determination is whether petitioner's husband is entitled to an increase in his community spouse income allocation.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Sherri Seubert  
Marathon County Dept. of Social Services  
400 E. Thomas Street  
Wausau, WI 54403

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a nursing home resident of Marathon County. Her husband resides in the community.
2. An application for MA was filed on petitioner's behalf in October, 2013. Petitioner was found to be eligible for nursing home MA effective October 1, 2013.

3. Petitioner's monthly income in October, 2013 is \$878 per month from social security.
4. Petitioner's husband's income is \$1,704 per month social security and \$907.94 retirement. His community spouse income allowance was set at \$2,931 in 2014, so part of petitioner's income was allocated to him. The result was a monthly cost of care of \$256 for January, 2014 and \$282.69 beginning February 1, 2014. There was no patient liability in 2013 due to medical bill deductions.
5. Petitioner's wife's monthly, necessary expenses total \$3,162. Included in the expenses are a mortgage and other home related expenses, a car loan and other auto related expenses, insurance costs, and over-the-counter medications.

### **DISCUSSION**

Wis. Stat., §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 \$2,931. See MA Handbook, Appendix 18.6.2. The institutionalized person may divert some of her income to her community spouse rather than contributing to her 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.

An administrative law judge (ALJ) can grant an exception to this limit on income diversion. The ALJ may increase the income allowance following a fair hearing. The ALJ 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 an ALJ 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.

The standard for raising the income allowance is whether, due to exceptional circumstances that could result in financial duress, petitioner's husband needs additional income on top of the \$2,931 already allowed to him. Thus my job is not just to look at his expenses, but expenses that might cause financial duress due to exceptional circumstances.

I have reviewed petitioner's husband's list of expenses. Some, such as charitable giving and gifts, I cannot include in the list of expenses that could lead to financial duress. In the end I added up necessary expenses to be \$3,162. That result will remove most of the monthly cost of care for petitioner but not all.

### **CONCLUSIONS OF LAW**

Petitioner's husband's monthly expenses to avoid financial duress total \$3,162.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to increase the monthly income allocation of petitioner's husband to \$3,162, retroactive to January 1, 2014, and to change the monthly patient liability accordingly. The county shall take the action within 10 days of this decision.

**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 served and filed with the appropriate court 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. After filing the appeal with the appropriate court, it must be served on 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 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

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 Madison,  
Wisconsin, this 4th day of March, 2014

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\sBrian C. Schneider  
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 March 4, 2014.

Marathon County Department of Social Services  
Division of Health Care Access and Accountability