



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MRA/157193

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 25, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance, a hearing was held on June 03, 2014, at Waupaca, Wisconsin.

The issue for determination is whether petitioner’s wife is entitled to an increase in her community spouse income allocation.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Pam Kolb

Waupaca County Department of Social Services  
811 Harding Street  
Waupaca, WI 54981-2087

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waupaca County.
2. An application for MA was filed on petitioner’s behalf on March 27, 2014. Petitioner was found to be eligible for nursing home MA effective December 16, 2013.

3. Petitioner's monthly income was \$2,960.00 per month from a pension, veteran benefits, and Social Security when he applied. His monthly cost of care was set at \$1,081.00 as of January 1, 2014.
4. Petitioner's wife receives \$751 per month from social security. Her community spouse income allowance was set at \$1,834, so part of petitioner's income was allocated to her. The county agency established a community spouse income allowance of \$2,585 per month. Thus \$1,834 of petitioner's income was allocated to his wife, with the remainder going to the monthly cost of care and his \$45 personal needs allowance.
5. Petitioner's wife seeks to have her income allowance increased. However, her listed monthly expenses are less than the calculated allowance. Petitioner's wife established the following necessary monthly expenses totaling \$2,383.00 per month, to wit:
  - Rent \$415
  - Cable \$95
  - Electric \$40
  - Car payment \$268
  - Car Insurance \$50
  - Car maintenance \$25
  - Dental \$50
  - Gas \$100
  - Laundry \$30
  - Medications/Medical \$60
  - Food \$400
  - Cell phone \$30
  - Credit card payments \$820 (minimum payments toward cumulative \$27,800 debt)

### 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 is \$2,585. See MA Handbook, § 18.6.2. 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.

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.

As a first point, the community spouse income allocation (CSIA) was calculated incorrectly. The county determined it to be \$2,585. It should have been \$2,674.50. The CSIA is the lesser of \$2,898 or \$2,585 *plus* an excess shelter allowance. Handbook, App. 18.6.2. The excess shelter allowance is the cost of shelter above \$775.50. The cost of shelter includes rent and the Food Share utility standard, which for petitioner's wife would be \$450. The rent and the utility standard total \$865, which is \$89.50 above \$775.50. \$2,585 *plus* \$89.50 is \$2,674.50. Thus petitioner's wife is entitled to a monthly CSIA of \$2,674.50, which is the lesser of the two amounts.

For me to increase the CSIA, the standard for raising the income allowance is whether, due to exceptional circumstances that could result in financial duress, petitioner's wife needs additional income on top of the \$2,674.50 already allowed to her. Thus my job is not just to look at her expenses, but expenses that might cause financial duress due to exceptional circumstances.

I have reviewed petitioner's list of expenses, and they do not exceed the correct CSIA of \$2,674.50. In addition, I recognize that several potential expenses were testified to, including future vehicle needs and an anticipated eye procedure, but I cannot add potential expenses.

### **CONCLUSIONS OF LAW**

1. The county incorrectly determined petitioner's CSIA.
2. There is no basis to increase the CSIA above the corrected amounts because petitioner's monthly expenses do not exceed \$2,674.50.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to increase petitioner's wife's monthly community spouse income allocation to \$2,674.50 effective January 1, 2014, and to change petitioner's monthly patient liability accordingly. The county shall do so within 10 days of this decision. In all other respects the petition for review is hereby dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 22nd day of July, 2014.

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\sPeter McCombs  
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 July 22, 2014.

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