



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: MRA - 210683

PRELIMINARY RECITALS

Pursuant to a petition filed on October 11, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Walworth County Department of Human Services regarding Medical Assistance (MA), a hearing was held on December 19, 2023, by telephone. The matter was originally heard on November 15, 2023, but the parties agreed to try and resolve the matter without a hearing. The second day of hearing was held on December 19, 2023 as the parties were not able to resolve the matter.

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

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Sandy Cross

Walworth County Department of Human Services
PO Box 1005 County Rd NN
Elkhorn, WI 53121-1005

ADMINISTRATIVE LAW JUDGE:

Kelly Cochran
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ██████████) is a resident of Walworth County and receives Institutional MA. His spouse has remained in the community.
2. On November 24, 2023 and December 12, 2023, the agency advised the petitioner of the amount of income he could allocate to his spouse.
3. Petitioner's community spouse has a gross monthly income of \$2387.70. Petitioner's monthly gross income is \$2340.14.
4. Petitioner's community spouse's allowable monthly expenses total \$3,825.03 per month.
5. The agency allowed a community spouse income allocation of \$797.04 effective November 2023 and then \$1456.96 effective December 2023.
6. The parties agreed that the income allocation determined herein is to be effective October 1, 2023.

DISCUSSION

Spousal impoverishment is an MA policy, created pursuant to the Medicare Catastrophic Coverage Act of 1988, which 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. Wis. Stat., § 49.455 sets forth the law regarding the protection of the community spouse's income and resources.

After an institutionalized person is found eligible, s/he may allocate some of his/her income to the community spouse. The institutionalized person must decide how much income to allocate and may allocate an amount that brings the community spouse's income up to the maximum allocation or they may choose to allocate a lesser amount. See *MA Eligibility Handbook (MEH)*, § 18.6.1 available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. The maximum allocation allowed currently is \$3,715.50. *Id.* at § 39.4.4.

The agency is required to determine the maximum amount of income that the institutionalized spouse can allocate to their community spouse, in relevant part, as follows:

1. Find the Community Spouse Lower Income Allocation Limit.
2. Determine the excess shelter allowance.
3. Determine the lesser of:
 1. The sum of the Community Spouse Lower Income Allocation Limit and the excess shelter allowance.
 2. The Community Spouse Income Allocation Maximum.
4. Subtract the community spouse's monthly gross income from the amount determined in Step 3. The result is the maximum amount of income that the institutionalized person can give to their community spouse. They may give an amount less than this, but not more unless ordered by a fair hearing decision or a court order.

A court or fair hearing can increase the community spouse income allocation if it determines the spouse is not able to provide for his or her necessary and basic maintenance needs with the amount allocated.

Id. at § 18.6.2.

In this case, the agency allocated the maximum it could allow to the community spouse. The community spouse maintains that she cannot get by on her income and allocation alone. The agency does not have discretion to allocate income to her that would cause her “income plus allocation” total to exceed the maximum. However, I have some limited discretion and have determined that her income is short of what she needs to cover basic living expenses. See Wis. Stat., § 49.455(8)(c). The statute allows the allocation to be raised to avert financial duress, created by exceptional circumstances, for the community spouse. To determine whether an expense is basic, an ALJ looks at whether an expense is either mandatory (*e.g.*, income tax) or essential for survival (*e.g.*, food). The community spouse presented her various expenses at hearing. I add that the community spouse is employed, so her payroll taxes should be subtracted from her gross income and are averaged in the expenses list below. The credit card and hospital debts are listed with the minimum monthly payment. I cannot include a roof repair for which no debt has yet been incurred, but I did add in a monthly home maintenance expense and a personal care expense.

The acceptable monthly expenses for the community spouse are as follows:

Mortgage 1	\$949.83
Mortgage 2	\$44
Utilities (water)	\$65
Utilities (electric)	\$123
House insurance	\$91.58
Home maintenance	\$50
Water softener	\$19
Credit card (████████)	\$35
Credit card (████████)	\$85
Credit card (████████████████)	\$29
Credit card (████████████████)	\$35
Credit card (████████)	\$49
Credit card (████████████████)	\$56.37
Credit card (████████████████)	\$40
Credit card (████)	\$296.12
Credit card (████████████████)	\$35
Credit card (████████████████)	\$200
Car insurance	\$290
Car registration/maintenance	\$7
Car payment	\$498
Gas (auto)	\$150
Phone	\$128
Groceries	\$200
Personal care (haircuts, clothing, etc.)	\$20
Hospital bills (████)	\$50
Hospital bills (████████)	\$50
Medicare	\$174.40
Federal withholding	\$13.84
Wis. withholding	\$8.53
SS	\$26.23
Medicare tax	\$6.13
<hr/>	
TOTAL	\$ 3,825.03

Based on the foregoing, I will order that the community spouse income allowance be raised to \$3,825.03 per month. The agency is also reminded to review these costs in an annual review.

CONCLUSIONS OF LAW

Due to exceptional circumstances, the petitioner’s community spouse requires a \$3,825.03 Maximum Community Spouse Income Allocation effective October 1, 2023.

THEREFORE, it is ORDERED

That the petition for review herein be remanded to the agency with instructions to increase petitioner’s community spouse’s Maximum Community Spouse Income Allocation to \$3,825.03 effective October 1, 2023, and to issue a notice of decision regarding same. This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition is 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, 4822 Madison Yards Way, 5th Floor North, 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.

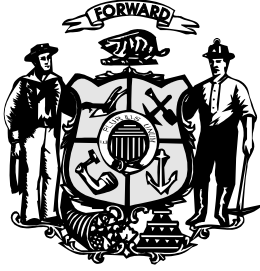
APPEAL TO COURT

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, **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 Milwaukee,
Wisconsin, this 8th day of January, 2024

\s _____
Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAMail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 8, 2024.

Walworth County Department of Human Services
Division of Health Care Access and Accountability