



STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS

In the Matter of

[REDACTED]

DECISION

MRA-70/15746

P R E L I M I N A R Y R E C I T A L S

Pursuant to a petition filed June 5, 1997, under s.49.45(5), Wis. Stats., to review a decision by the Winnebago County Dept. of Social Services nursing home care costs that remain uncovered by Medical Assistance (MA), a hearing was held on July 22, 1997, at Neenah, Wisconsin. At the request of the petitioner, the record was held open for 10 days for submission of additional information.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Department of Health & Family Services  
Bureau of Health Care Financing  
1 W. Wilson St., Room 230  
P.O. Box 309  
Madison, WI 53707-0309  
By: Mary Beth Gehrke, case manager  
Winnebago County Dept. of Social Services  
211 N. Commercial Street  
Neenah, WI 54956

EXAMINER:

Nancy Gagnon, Attorney  
Division of Hearings and Appeals

F I N D I N G S O F F A C T

1. Petitioner (SSN: [REDACTED], CARES No. [REDACTED]) is a resident of Winnebago County. He is certified for MA.

2. An MA application was filed on the petitioner's behalf and subsequently granted. A periodic case review was later performed in June, 1997. The county agency issued a written notice approving ongoing MA on June 24, 1997. The notice states that the MA certification will continue, and that \$942.50 of the petitioner's nursing home cost remains his responsibility (the balance is paid by MA) effective June 1, 1997.

3. The petitioner is an institutionalized person and has a spouse residing in the community. She has gross monthly income of zero. After subtraction of a personal allowance, his health insurance premium costs, and a \$1,768 Community Spouse Allocation from petitioner's gross income of \$2,878.93, the Department determined that the he had \$942.50 available to contribute toward the cost of his nursing home care. See Exhibits 1, 2, 3.

4. The current Maximum Community Spouse Income Allocation is \$1,768 (this is not an "excess shelter" case). After subtracting Mrs. [REDACTED] gross monthly income of zero from the maximum allocation, the Department determined that \$1,768 of Mr. [REDACTED] income could be "allocated" to her.

5. The petitioner's spouse has identified living expenses of \$1,413 (\$1541-\$128 for his insurance which was already deducted in the calculation) which are payable monthly on Exhibit 4. She also is responsible for federal income taxes of \$116 monthly on the petitioner's pension. Mrs. [REDACTED] further identified additional living expenses of (1) \$200 monthly in payments to a caregiver who is looking after her, doing household chores, cooking, driving, and yard work, for eight months following her February, 1997, hospitalization, and (2) unspecified expenses for major repairs to her home's basement, roof, and stucco siding. Post-hearing, the petitioner verified that the total repair cost for siding replacement is \$9,600, and the roof repair cost is \$3,000. No estimate of the basement repair cost was submitted. Finally, Mrs. [REDACTED] has unspecified expense amounts for clothes, postage, and miscellaneous household expenses. I assign a monthly cost of \$75 to these latter categories.

6. All of the expense amounts listed in Finding #5 are reasonable. However, the petitioner has not actually signed a home improvement bid proposal, and offered no suggestion as to the length of time (and possible financing costs) over which she intends to pay off the siding and roof replacement expenses.

7. In summary, Mrs. [REDACTED] monthly living costs, without home improvements, from March through October, 1997, are:

Exhibit 4 expenses	\$1413.00
Husband's income taxes	116.00
Caretaker	200.00
Miscellaneous	75.00
TOTAL EXPENSES	1804.00

After October, 1997, Mrs. [REDACTED] living costs, without home improvements, will be \$1,604 monthly (no caretaker expense).

#### D I S C U S S I O N

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 \$1,768. In this case, the income of the community spouse, Mrs. [REDACTED], does not exceed this maximum (indeed, her income is zero). The Department therefore allocated the full \$1,768 to her from Mr. [REDACTED]'s net income.

Mrs. [REDACTED] argues that she cannot get by on the \$1,768 maximum. The county agency does not have discretion to allocate income to her that would cause her income plus allocation total to exceed \$1,768. However, I have determined that Mrs. [REDACTED]'s allocation is currently \$36 short (\$1804 expenses - \$1768 allocation) of what she needs to cover basic living expenses. I conclude that her allocation must be raised by this amount from June through October, 1997, to avert financial duress. An exceptional circumstance is present because Mrs. [REDACTED] incurs an unusual caretaker cost. See s.49.455(8)(c), Wis. Stats. After October, 1997, the \$1,768 allocation is adequate to meet her identified needs because she will no longer have the \$200 monthly caretaker expense.

I did not include any of the home improvement costs because Mrs. [REDACTED] has not yet signed a bid proposal or arranged for financing of that work. To assign a monthly dollar amount to her budget for this work would be highly speculative, and there certainly is not evidence in the hearing record to support adequate Findings on this subject. When Mrs. [REDACTED] actually signs a bid proposal for home improvement work, and is prepared to testify as to what her probable loan repayment terms will be, she should ask the county agency to re-evaluate the cost of care and (when the county inevitably declines to change the allocation amount) then file another hearing request to have the allocation amount shifted upward in light of established monthly home improvement costs.

#### C O N C L U S I O N S   O F   L A W

1. The cost of home improvements for which Mrs. [REDACTED] has not yet contracted should not be a basis for allocating income to a community spouse above the Maximum Community Spouse Income Allocation.
2. Due to exceptional circumstances, the petitioner's wife requires \$1,804 from June through October 1997, to avert financial duress.
3. The county agency shall add \$36 to the petitioner's current allocation for June through October, 1997; thereafter, Mrs. [REDACTED] shall receive the standard maximum allocation (under current policy, \$1,768).

NOW, THEREFORE, it is

#### O R D E R E D

That the petition herein be remanded to the county agency with instructions to redetermine the petitioner's patient responsibility amount from June 1 through October 31, 1997, after adding \$36 to the Community Spouse Allocation for June

through October, 1997. 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

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 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 20 days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in § 227.49 of the state statutes. 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 filed 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). The appeal must be served on the Department of Health and Family Services, P.O. Box 7850, Madison, WI 53707-7850.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in § 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this 4<sup>th</sup>  
day of September, 1997.

Nancy Gagnon  
Nancy Gagnon, Attorney  
DIVISION OF HEARINGS AND APPEALS  
0903/ng

cc: Petitioner  
Winnebago County