DHA-15 (R10/97)

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MRA-32/22456

PRELIMINARY RECITALS

Pursuant to a petition filed May 4, 1998, under Wis. Stat. § 49.45(5), to review a decision by the La Crosse County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on August 17, 1998 at LaCrosse, Wisconsin. A hearing scheduled for June 10, 1998 was rescheduled at the petitioner's request.

The issue for determination is whether the community spouse may increase her income allocation

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Wisconsin Department of Health and Family Services
Bureau of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309
By: Carmen Mashak, ESS, ESS
La Crosse County Dept Of Human Services
P.O. Box 4002
La Crosse WI 54602

EXAMINER:
Joseph A. Nowick, Attorney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN [redacted], CARES [redacted] is a resident of LaCrosse County.

2. On April 23, 1998, the county agency sent a written notice of negative action to the petitioner. The negative action in this case was the determination of $612.94 as the petitioner's amount of patient responsibility. The petitioner also received a May 14, 1998 notice that effective June 1, 1998, the patient responsibility would increase to $1474.93. The increase was based on an increase in the petitioner's gross income.

3. [redacted]s son lives at home. She supports him in part as he is attending college. He earns about $600 per month at U-Haul.

4. The petitioner now has a gross monthly income of $1,782.49 from insurance and a military pension. He resides in a skilled nursing home.

5. [redacted]s employed and earns $2,188.67 per month. [redacted] completed a list of her monthly expenses. (Exhibit #1). The total amount per month on the average was $3,742.

DISCUSSION

The federal Medicare Catastrophic Coverage Act of 1988 included extensive changes in State Medicaid eligibility determinations as they relate to spousal impoverishment where one spouse is a resident in a nursing home. The purpose of the new act was to protect a "community" spouse's assets and resources and designate how a spousal share would be computed. The Act also established a new minimum needs allowance for the community spouse at a specified percentage of the federal poverty line. Consequently the Wisconsin Legislature enacted sec. 49.455, Wis. Stats. in order to bring the Wisconsin Medicaid program into conformity with federal law.

Section 49.455 specifically states that the department is to use the criteria of that statutory section in determining the eligibility for medical assistance under §§49.46 or 49.47, Wis. Stats. and the required contribution toward the care of an institutionalized spouse.

"Community spouse" refers to the person who is married to an institutionalized individual. See sec. 49.455(1), Wis. Stats. As a general rule, no income of a spouse is considered to be available for use by the other spouse during any month in which that other spouse is an institutionalized spouse. See sec. 49.455(3), Wis. Stats. However, after an institutionalized person is found eligible for medical assistance (MA), he or she may allocate income to the community spouse.

If the community spouse's monthly income is below a certain amount, the institutionalized spouse may allocate some of his or her income to bring the community spouse's income up to that amount. That amount is the lesser of $2,019 or $1,768 plus an excess shelter allowance. In this case, Sec. 49.455(4)(c), Wis. Stats., the Medical Assistance Handbook, Appendix 23.6.0., and sec. 49.455(4)(b), Wis. Stats., allows an increase in the monthly community spouse allotment by order of a fair hearing examiner or a court. See also MA Handbook, Appendix 23.6.0. In order to increase the allotment, the examiner must find exceptional circumstances resulting in financial duress. See sec. 49.455(8)(c), Stats.

It is important to emphasize that even if income allocation is possible, not all expenses qualify. In order for a Hearing Officer to use expenses, they must meet "necessary and basic maintenance needs" MA Handbook, Appendix 23.6.0. "Income Allocation". This corresponds to the statutory language that the new income amount is in lieu of the "minimum monthly maintenance needs". Sec. 49.455(8)(c), Stats., emphasis added. Because the community spouse is essentially asking state taxpayers to give the nursing home resident more welfare in the form of MA, I do not think that every expense is automatically appropriate for inclusion, even if it is not frivolous. As an example, by following this logic, I do not include any dues or donations to religious or charitable donations as an allowable expense.

Using the above standards, I find that there is an exceptional circumstance due to the high cost of Mrs. [redacted] housing and utilities. Having found that, the Hearing Officer may increase the income allocation. The next step is to determine what expenses claimed by [redacted] are for "necessary and basic maintenance needs". The current amount allocated is the maximum monthly needs allowance of $1,768.00, as set by the county agency per sec. 49.455(4)(c) and based on the community spouse having no excess shelter costs. To make a change, I must examine both the monthly income and liabilities of Mr [redacted].

I will only address some of the 50 items submitted. If not addressed, then the amount listed on Exhibit #1 is accepted. The first group of items are those that do not meet the definition of minimum monthly needs. That is, what is not necessary for the community spouse to maintain himself or herself. Included is the $1,200 for savings, the $1,800 for visiting relatives, and $300 for weekend trips. I may not allow the $2,963 for college tuition, as Medicaid is not an educational scholarship program. $1,400 for gifts is too much and will be reduced to $400. Potential expenses may not be included now, which means that the $600 for lawn care/snow removal next year and $500 for possible nursing home insurance has been removed. Finally, the payment to church/charity of $500, as discussed above, must be excluded. Thus, based on all of the above, I find that the maximum monthly income allowance must be placed at $2,955.00. [redacted]s to receive as much of her husband's income that will raise her income to that amount. As her income is $2,188.67, that amount is $766.33 leaving the patient liability (after the $40 personal allowance is subtracted from the $1,782.49) of $976.16 each month. The county agency may adjust these figures if there has been a more recent change in income to either spouse.

CONCLUSIONS OF LAW

1. The cost of expenses for the items that are basic and necessary may 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 $766.33 in addition to her income to avert financial duress.

NOW, THEREFORE, it is **ORDERED**

That the petition for review herein be remanded to the county agency to reduce the petitioner's patient liability to an amount that allows the community spouse to receive an income allocation of $2,955 for the months of April, 1998, and onward, if there is no other change in the income of the petitioner or his spouse. This is to be done within 10 days from the date of this Order.

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 that 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 for benefits concerning Medical Assistance (MA) must be served on the Wisconsin 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 sec. 227.53 of the statutes.

Given under my hand at the City of Madison, Wisconsin, this 25th day of August, 1998.

Joseph A. Nowick, Attorney
Division of Hearings and Appeals
821/jan

cc: LaCrosse Co.
Susan Wood, DHFS