



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MRA-14/22543

PRELIMINARY RECITALS

Pursuant to a petition filed May 6, 1998, under Wis. Stat. § 49.45(5), to review a decision by the Dodge County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on August 24, 1998 at Juneau, Wisconsin. Hearings set for June 19 and July 23, 1998, were rescheduled at the petitioner's request.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[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: Ellie Sokoly, ESS
Dodge County Dept Of Human Services
143 E Center St
Juneau WI 53039

EXAMINER:

Nancy Gagnon, Attorney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN [REDACTED], CARES [REDACTED] is a resident of Dodge County. He is certified for MA.

APRIL ALLOCATION

2. The petitioner has an ongoing MA case. On February 4, 1998, the county agency issued written notice to the petitioner advising that he would have to contribute \$978.21 towards his nursing home care expense (the balance is paid for by MA). That notice also advises the petitioner that \$261 of his income would be disregarded in this computation because it was being "allocated" to his wife. See Exhibit 1C, February 4 notice.
3. The petitioner is an institutionalized person and has a spouse [REDACTED] residing in the community. She had gross monthly income of \$1,507 for the months relevant here. In April, the Maximum Community Spouse Income Allocation was \$1,768. After subtracting [REDACTED]'s gross monthly income of \$1507 from the Maximum Allocation, the Department determined that only \$261 of [REDACTED] income could be "allocated" to her (thereby bringing her income up to the Maximum Allocation level).
4. The petitioner had gross monthly income of \$1457.21 in April and May. After subtraction of a \$40 statutory personal allowance, the \$261 spousal allocation, and a \$178 health insurance premium expense, the Department determined that he had \$978.21 available to contribute toward the cost of his April nursing home care. See Exhibit 1B.
5. [REDACTED] has identified living expenses of \$3,135.42 which are payable monthly on Exhibit 3B. (This figure includes the listed annual and variable expenses divided by 12).
6. All of the expenses referred to in Finding #5 are reasonable, basic and necessary living expenses with the exception of (1) \$80 donated monthly to the petitioner's church, (2) [REDACTED] health insurance premium, which was already considered in the agency allocation calculation, and (3) [REDACTED] care liability, which is paid out of his income, rather than [REDACTED]'s income. This leaves monthly basic and necessary expenses of \$1,934.40.

MAY ALLOCATION

7. On April 13, 1998, the agency issued written notice to the petitioner advising that \$302 of Mr. [REDACTED] income would be allocated to [REDACTED] effective May 1, 1998, and therefore his cost of care liability would decrease to \$937.21 on May 1, 1998. This change was caused by a state-wide increase in the Maximum Allocation to \$1,809 effective May 1.

JUNE ALLOCATION

8. On May 1, 1998, the agency issued written notice to the petitioner advising that it was still allocating \$302 of [REDACTED] income to [REDACTED], but that his cost of care liability would increase to \$1,022.19 effective June 1, 1998. The cost of care liability increased because the agency budgeted higher income for [REDACTED] of \$1,542.19.

DISCUSSION

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 \$1,809 (\$1,768 in April). See *MA Handbook*, Appendix 23.6.0 (5-1-98). In this case, the income of the community spouse, [REDACTED], does not exceed \$1,809. The Department therefore allocated from [REDACTED] net income the difference between the Maximum Allocation and [REDACTED]'s income (a difference of \$261 in April, and a difference of \$302 in May).

[REDACTED] argues that she cannot get by on the \$1,809 Maximum Allocation. The county agency does not have discretion to allocate income to her that would cause her income plus allocation total to exceed \$1,809. However, I have some limited discretion and have determined that [REDACTED] income is short of what she needs to cover basic living expenses. After subtraction of the \$302 currently allocated to her, she is still short of the amount she needs to survive. I conclude that her Maximum Allocation must be raised to \$1,855.23 to avert financial duress. An exceptional circumstance is present because [REDACTED] incurs relatively high home repair costs. See s.49.455(8)(c), Wis. Stats.

In setting the Maximum Allocation at \$1,855.23, I accepted as accurate all of the budget numbers provided by [REDACTED] in Exhibit 3B, with the exception of items discussed in this paragraph. I did not include any donations to religious or charitable donations among the allowable expenses. Because the petitioner is essentially asking state taxpayers to give him more welfare in the form of MA, it is not appropriate for petitioner or his spouse to give money away at this time. I also did not include his \$178 health insurance premium because that amount is paid out of [REDACTED]'s income and is already deducted in the care liability calculation. Similarly, I did not include the care liability amounts (\$978.21 for April, \$937.21 for May, \$1,022.19 for June) because they are paid from [REDACTED]'s income and to credit them would effectively eliminate any cost of care liability. Finally, I did not add to [REDACTED] budget the items she listed as "expenses that will have to be paid." No dollar figures were assigned to these items, and most of these costs have not been incurred. I cannot guess at items this speculative and then include them in raising the Maximum Allocation. If this couple should incur large, unexpected expenses in the future, they are always free to request another fair hearing to further increase the Maximum Allocation.

There were several items that were not identified with specific dollar amounts that I added to [REDACTED] budget in raising the Maximum Allocation. Those were (1) mileage for doctor appointments and obtaining prescription refills (no aggregate or per mile cost was identified, so I assumed the state reimbursement rate of 18 cents per mile) and (2) the petitioner's federal income, Social Security, and Medicare taxes. The tax amounts were difficult to identify because the petitioner did not identify amounts for these estimated taxes, did not provide her previous year's tax return, and is expecting to miss several months of work in the immediate future (thereby lowering her tax liability). Given all of this uncertainty, I used the 1998 year-to-date tax withholding amounts shown on the petitioner's July 16, 1998, paystub. It is the petitioner's burden to establish the need for an increase in the Maximum Allocation, so it is not appropriate for me to assume that [REDACTED] will have the same or greater withholding throughout the rest of the year.

CONCLUSIONS OF LAW

1. The cost of charitable contributions and expenses for the institutionalized spouse 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 a \$1,855.23 Maximum Community Spouse Income Allocation.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be remanded to the county agency with instructions to increase Mrs. [REDACTED] Maximum Community Spouse Income Allocation to \$1,855.23 effective with the April, 1998, cost of care liability determination. 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 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 which 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 31st day
of August, 1998.

Nancy Gagnon
Nancy Gagnon, Attorney
Division of Hearings and Appeals
828/ng

cc: Dodge Co.
Susan Wood, DHFS