



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
C/O [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MRA-64/35786

PRELIMINARY RECITALS

Pursuant to a petition filed July 29, 1998, under Wis. Stat. § 49.45(5), to review a decision by the Walworth County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on September 30, 1998 at Elkhorn, Wisconsin.

The issue for determination is whether the county agency has correctly determined the petitioner's monthly patient liability.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
C/O [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: Cathy Maurer , ESS, ESS
Walworth County Dept Of Human Services
County Trunk NN
P.O. Box 1006
Elkhorn WI 53121

EXAMINER:

Kenneth D. Duren, Attorney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN [REDACTED], CARES [REDACTED]) is an institutionalized resident of Walworth County; he was admitted to a skilled nursing facility on June 18, 1998.
2. On July 6, 1998, the county agency performed a review and determination of the petitioner's resources on the Department's DES-3030 form entitled a NOTICE TO INSTITUTIONS,

NURSING HOME, CLIENT, informing the petitioner that the agency had determined that he had gross monthly income of \$1,038 of Social Security benefits; and that after deduction of a \$40 personal needs allowance and a Community Spouse Income Allocation to his wife of \$627.56, that his monthly patient liability share of the cost of his care would be \$370.44, effective July, 1998. See, Exhibit #5.

3. The county agency determined that he had no patient liability for June, 1998. See, Exhibits #5 & #6.
4. On or about July 9, 1998, the county agency issued a Notice of Decision to the petitioner informing him that his patient liability to defray the costs associated with his care would be \$370.44, effective August 1, 1998. See, Exhibits #5 & #6.
5. The county agency determined the Community Spouse Income Allocation was \$627.56 by subtracting the petitioner's spouse's gross monthly income from the maximum spousal allowance under program regulations, i.e., $(\$1,809 - \$1,181.44 = \$627.56)$.
6. The county agency determined the spouse's gross monthly income was \$800.64 in wages, plus, \$380.80 of in-kind value. $(\$800.64 + \$380.80 = \$1,181.44)$.
7. The \$380.80 of in-kind income is received by [REDACTED] from Metropolitan Associates; it represents free rent at her apartment, in return for her performance of services as a building manager. The in-kind income was calculated by multiplying \$2.38 per hour times 160 hours per month. $(\$2.38 \times 160 = \$380.80)$ The value of \$2.38 per hour is set by the petitioner's contract with Metropolitan Associates; in addition, she receives cash income averaging \$800.64 per month from this job.
8. The petitioner filed an appeal with the Division of Hearings & Appeals on July 29, 1998, seeking a decrease in the amount of his patient liability so that the amount allocated to his wife could increase.
9. The petitioner is a veteran of military service.

DISCUSSION

This case revolves around a simple issue: has the county agency correctly counted the petitioner's wife's in-kind income in arriving at her gross monthly income. This amount then affects the amounts of his income that Mr. [REDACTED] must pay as patient liability and that which is diverted to his wife as community spousal allowance.

It is clear that Mrs. [REDACTED] pays no rent as a condition of her employment, and that her employer has set a fixed determination of the hourly value of that rent expressed as a wage for full-time work. The employer also pays cash wages, the amount of which is uncontroverted.

"In-kind" benefits are to be counted as earned income for MA eligibility determination purposes, if the benefits are regular, predictable, and received in return for services or products. See, MA Handbook, App. 15.5.1. The Handbook further directs that in order to determine the value of the in-kind benefits, the agency is to

...use the prevailing wage (but not less than the minimum wage) in the community for the type of work the person does to earn the benefits.

Ibid.

The prevailing wage in Elkhorn for the work of a building manager at a subsidized housing project was established by the testimony of both parties to be \$2.38 per hour (in-kind), plus \$5.00 per hour (cash) ($\$800.64 \div 160 \text{ hours} = \5.004 per hour), i.e., a total of \$7.38 per hour, approximately.

The petitioner asserts that the agency value is too high, and she points out that many residents pay much less because this is subsidized housing. In subsidized housing, the rent varies based upon the renter's household income, and/or size. The petitioner, however, is *employed* by the building owner, and she receives income in product and cash. That the monthly value of an apartment leasehold would be valued at \$380.80 is not shocking; it is the same type of value that the other residents get each month too. The difference is that their rent is *subsidized*, i.e., reduced due to means-testing of each individual renter. The petitioner is *paid wages* in cash and rental value.

The agency has applied the MA Program income rules correctly here. Thus, the resultant spousal income allocation and patient liability calculations are correct as well. The agency action is affirmed.

As a side-note to the petitioner, while it is true that he is a veteran, his personal needs allowance is only the \$40 allowed by the agency. Only currently unmarried institutionalized veterans or surviving institutionalized spouses of veterans retain the \$90 personal needs allowance.

Finally, as I informed Mr. & Mrs. [REDACTED] at the hearing, they may ask the agency to increase her spousal income allocation, by requesting the same from the county, and filing a hearing request if denied. At that time they would need to establish Mrs. [REDACTED]'s basic monthly maintenance needs, and demonstrate that the standard maximum allocation does not meet these needs. Mrs. [REDACTED] indicated that she had spoken to a legal services representative and would be making such a request in the future if the decision here was adverse.

CONCLUSIONS OF LAW

The county agency has correctly determined the petitioner's spouse's income, and the petitioner's resultant patient liability.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be, and the same hereby 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 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, as respondent, 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 5th day
of October, 1998.



Kenneth D. Duren, Attorney
Division of Hearings and Appeals
102/

cc: Walworth County DHS
Susan Wood, DHFS