



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

(petitioner)

DECISION

MRA-48/48900

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 19, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Polk County Dept. of Social Services in regard to medical assistance, a hearing was held on May 15, 2001, at Balsam Lake, Wisconsin.

The issue for determination is whether the petitioner's spouse is entitled to additional income under the spousal impoverishment provisions of medical assistance.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:  
(petitioner)

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Sandra Teske, ESS  
Polk County Dept Of Social Services  
300 Polk County Plaza, Suite 1  
Balsam Lake, WI 54810

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (SSN 391-12-8791, CARES #4111443541) resides in a nursing home in Polk County.
2. The petitioner's spouse seeks to increase her monthly income allotment in order to meet her basic needs.
3. The petitioner's spouse lives in the community.

4. The petitioner receives \$2,453.80 in total income each month.
5. The petitioner's spouse receives \$386 in income each month.
6. The petitioner's shelter costs exceed \$862.50 per month.
7. The petitioner submitted a budget showing the following monthly expenses (Exhibit 1):
  - a. Mortgage and real estate escrow \$662.25
  - b. Second Mortgage \$205.77
  - c. Condo Association Fee \$ 50
  - d. Loan on 1999 Ford Taurus \$485.30
  - e. Food \$ 75
  - f. Beauty shop & other expenses \$ 40
  - g. Telephone \$ 60
  - h. Waste Management \$ 9.50
  - i. Church (Centennial building fund) \$100
  - j. Automobile gas and maintenance \$65
  - k. Rural American Bank short-term loan \$110.76
  - l. Citifinancial short-term loan \$100.46
  - m. Wells Fargo short-term loan \$ 70
8. The petitioner's budget showed the following quarterly expenses:
  - a. Modern Woodman life insurance \$138.81 (\$46.27 per month)
  - b. State life insurance \$ 94.59 (\$31.53 per month)
  - c. Water utilities \$ 70 (\$23.33 per month)
9. The petitioner's budget showed the following annual expenses.
  - a. Home owner's insurance \$122 (\$10.17 per month)
  - b. Auto insurance \$606 (\$50.50 per month)
  - c. Real estate taxes \$2,052.90 (\$171.08 per month)
10. The petitioner's budget showed the following irregular expenses:
  - a. Dental \$250
  - b. Glasses \$306.50
  - c. Medicines \$390.25
  - d. Car repair deductible \$150
11. The petitioner submitted documentation showing that her expenses will be \$2,782.90 in May. (Exhibit 2)
12. Expenses included in May but not in her budget are the following:
  - a. Sears \$ 25
  - b. Visa AAA \$100
  - c. Repay loan to Nadine \$ 75

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|----|---------------------|----------|
| d. | Repay loan to Mark  | \$ 75    |
| e. | Osceola Utilities   | \$ 60.41 |
| f. | Associated Eye Care | \$ 35    |
| g. | Modern Woodman      | \$125    |
| h. | Simon's scholarship | \$100    |
13. The petitioner's May expenses include \$100 in scholarship money that she is holding for her high school class.
  14. The petitioner's May expenses include \$100 to repay a loan against her Modern Woodman life insurance policy.
  15. The petitioner is paying \$485.30 a month for a 1999 Ford Taurus. She could receive adequate transportation from another vehicle that costs less.
  16. The petitioner did not include any money for entertainment or other miscellaneous expenses in her budget.

### DISCUSSION

Both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of institutionalized person so that the spouse does not fall into poverty. See §49.455, Wis. Stats., and 42 U.S.C. §13964-5. The allowance is the lesser of \$2,175 or \$1,875 plus an excess shelter allowance, which is any shelter cost over \$562.50. *MA Handbook*, Appendix, §23.6.0. This means that to receive the \$2,175 maximum, a spouse's shelter costs must be at least \$862.50. An allowance to prevent spousal impoverishment can be increased at a fair hearing. Because any additional amount given to the community spouse is a taxpayer-financed subsidy in the form of medical assistance, the law restricts the hearing officer's ability to raise the limit. Wisconsin law provides the following test for the exception:

If either spouse establishes at a fair hearing that, due to *exceptional circumstances resulting in financial duress*, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse's monthly income allowance under sub. (4)(b).

§49.455(8)(c), Stats. Thus a hearing officer may increase the maximum allocation ceiling only by amounts needed to allow the community spouse to avoid financial duress and to meet necessary and basic needs. This means that certain expenses that are for desirable things are rejected. For example, the Division of Hearings and Appeals has long and consistently denied donations, including those to a church. *See, e.g.*, MRA-45/#22021 MRA-32/22456 MRA-05/37611 MRA-13/45972 MRA-14/22543.

The petitioner is institutionalized and his spouse lives in the community. His spouse receives \$386 in social security each month. He receives \$2,453 from a pension and social security each month. The spouse is entitled to \$2,175 each month without a hearing because her shelter expenses exceed \$862.50 each month. This means that she will be allowed at least \$1,789 of the petitioner's income. She believes that this amount is inadequate.

The county's economic support specialist attached both a budget and list of May 2001 expenses for the spouse to her May 4, 2001 letter to the Division of Hearings and Appeals. The budget is difficult to follow because it does not always break expenses down into monthly amounts and because it includes

certain one-time expenses. In addition, it is confusing to reconcile her budget with her May 2001 expenses. I have broken these documents down in Findings of Fact, paragraphs 7 – 12. Her regular expenses from her budget (paragraphs 7 – 9) equal \$2,366.92. The May expenses (paragraph 12) for Sears, Visa, loans to Nadine and Mark, Osceola utilities, and Associated Eye Care add an additional \$390.41 to this budget for a total of \$2,757.33. The Simon's scholarship is not included because it is not the spouse's money but rather money held by her for a fund set up by her high school classmates. The Modern Woodman life insurance listing in paragraph 12 is not included because it was previously listed in paragraph 8 as a quarterly expense. According to the petitioner, \$100 of the amount listed in paragraph 12 is to repay a loan against the policy. I find that it is unnecessary to repay the loan because failing to do so will only reduce the value of the policy and not cause it to be cancelled. There is no evidence that the amount remaining on the policy will be insufficient to cover her necessary and basic needs such as funeral expenses.

I have several concerns with the spouse's budget and expenses. The \$100 a month donation to her church is denied because these donations, as stated above, are not allowed. I also deny the \$181.25 requested for real estate taxes and homeowner's insurance because her budget states that her mortgage has a real estate escrow. The purpose of a real estate escrow is to pay real estate taxes and insurance, so I assume that these expenses will be taken care of. My next concern is with her car payments. It is unnecessary to spend \$485.30 a month on a car to meet one's necessary and basic needs. A four-year loan at 10% would allow her to buy a car valued at \$9,566.85, which is still more than necessary to meet her necessary and basic needs.

My last concern is with the spouse's heavy debt load. When her second mortgage and all of the short term loans from banks and relatives are added up they total \$761.99 a month. I understand that she is obliged to repay these amounts, but there is no assurance that she will not exceed her budget by continuing to fill up her credit cards and asking her family for additional money. On the other hand, she lists only \$75 a month for food, which is low, and lists nothing for entertainment or various miscellaneous expenses. In addition, while she lists various medical and other one-time expenses, she does not provide a monthly estimate for these expenses. I am not going to allow credit for expenses that are understated or that cannot be broken down into monthly figures because to do so requires speculation, but I will allow the full amount requested to repay her debts.

In conclusion, when the \$100 church payment, the \$181.25 for real estate taxes and homeowner's insurance, and half – or \$242.65 – of the car payment are removed from the \$2,757.33, the spouse has demonstrated that she requires \$2,233.43 a month to meet her basic needs. This is \$1,847.43 greater than her current income, which justifies transferring this amount from the petitioner's income to hers. If she wishes to have an amount greater than this she will have to file for a new hearing and present more detailed evidence to justify that request.

### **CONCLUSIONS OF LAW**

The petitioner's wife has demonstrated that she requires both hers and \$1,847.43 of the petitioner's income to meet her basic monthly needs.

**NOW, THEREFORE, it is** **ORDERED**

That this matter be remanded to the county agency with instructions that within 10 days of the date of this decision it shall reduce the petitioner's share of his medical expenses by \$1,847.43 and allocate this amount to his spouse to meet her basic monthly needs.

**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 Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

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 Eau Claire, Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

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Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals  
79/MDO

cc: Jan Place  
Susan Wood

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