



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

In the Matter of

(petitioner)

DECISION

MRA-13/53920

PRELIMINARY RECITALS

Pursuant to a petition filed June 25, 2002, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Dane County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on July 25, 2002, at Madison, Wisconsin. At the request of petitioner, the record was held open for two weeks for the submission of additional evidence. The petitioner timely submitted the additional evidence which is received into the record as Exhibit 8.

The issue for determination is whether petitioner's community spouse is entitled to an increase in her income allocation.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:
(petitioner)

Representative:
(petitioner's spouse)

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: Kathy Keller, ES Supervisor
Dane County Dept Of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxxx) is an MA recipient of Dane County who has been residing at the Clearview nursing home in Juneau, WI since May, 2000 due to severe injuries from a snowmobile accident. His wife, (petitioner's spouse), resides in the community in a Dane County home with their four children: 1) (16 months old); 2) (16 months old); 3) (4 years old); and 4) (7 years old).

2. Beginning August, 2002, the petitioner has begun to receive \$1,424 in Social Security Disability and \$713.83 in income continuation. See Exhibit 8.
3. Petitioner's wife receives earned income of \$2,350 from her employment. Their four children have begun to receive total Social Security of \$712 (\$178 per child). See Exhibits 8.
4. Petitioner's wife and her four young children have necessary monthly expenses of about \$8,095. See Exhibits 1-8. See detailed list of monthly expenses in Exhibit 8, pages 2-3.
5. The county agency sent a Notice of Decision to the petitioner stating that effective August 1, 2002 his patient cost of care contribution will increase from 0 to \$609.25, due to an increase in income. See Exhibit 2.

DISCUSSION

The federal Medicaid Catastrophic Coverage Act of 1988 (MCAA) included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat. §49.455(1).

The MCAA established a new "minimum monthly needs allowance" for the community spouse at a specified percentage of the federal poverty line. This amount is the income considered necessary to maintain the community spouse in the community. The current maximum level is set at \$2,232 if housing costs exceed \$580.50. MA Handbook, Appendix 23.6.0 (1-1-02).

A fair hearing officer or administrative law judge can grant an exception to this limit on community spouse income. The hearing officer may increase the income allowance following a fair hearing. The hearing officer does not have unfettered discretion in creating an exception to the maximum allocation ceiling, however. The relevant statutory provision states that the test for exception is as follows:

(c) 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 monthly income allowance under sub. (4)(b).

Wis. Stat., §49.455(8)(c), emphasis added. Thus a hearing officer may augment the maximum allocation ceiling only by amounts needed to alleviate financial duress, to allow the community spouse to meet necessary and basic maintenance needs.

In this case I find that petitioner's wife's necessary expenses are quite unusual due to her supporting and caring for four very young children. This is also an unusual case in that the petitioner's wife is young and employed; and her husband suddenly required ongoing residential nursing home services due to a severe snow mobile accident. The petitioner resides in a nursing home in Clearview, Wisconsin which is a long distance from the family's residence in Madison, WI. Due to this distance, the petitioner's family has very expensive long distance telephone bills to communicate with their father or husband. Those long distance telephone bills are basic and necessary. Furthermore, this family has large monthly mortgage payments (high shelter costs), high health insurance expenses and high day care costs for Mrs. DeVault to work with four young children. See Exhibit 8 pages 2 & 3.

As clearly indicated in the household's monthly budget, the petitioner's family has monthly expenses which are about \$2,874 more than the family's \$5,222 in earned and unearned income. See Exhibit 8, pages 2 & 3. Both during the hearing and her letter of July 31, 2002, ES Supervisor Kathy Keller does not dispute any of the household's expenses due to the exceptional circumstances of the petitioner's family. In her July 31, 2002 letter, Ms. Keller pointed out that the petitioner's spouse's monthly estimate of \$400 in food costs for a family of five appears low, and should be at least \$537 based upon Food Stamp guidelines for a family of five. A few items in the budget are not basic and necessary (pet care of \$12, gifts of \$60, and charitable donations of \$50). The county agency made it clear that they support petitioner's request for an increase in the income allocation to the community spouse and the reduction of petitioner's cost of care contribution from \$609 to zero. Therefore, for all the above reasons, I conclude that petitioner's wife requires an increase in her income allocation to avoid financial duress. This household requires total income of \$7,794.00 to meet basic and necessary expenses. From August 1, 2002 until such time as the household's income increases, the petitioner's cost of care contribution shall be zero.

CONCLUSIONS OF LAW

1. Petitioner's wife requires an increase in her monthly income allocation to avoid financial duress.
2. The county agency incorrectly increased petitioner's monthly cost of care contribution from zero to \$609.26 as of August 1, 2002. The petitioner's wife requires a \$7,794 Maximum Community Spouse Allocation.

NOW, THEREFORE, it is

ORDERED

That the matter is remanded to the county agency (**Attention: ES Supervisor Kathy Keller**) with instructions to: a) reduce petitioner's cost of care contribution to zero retroactive to August 1, 2002; and b) increase (petitioner's spouse) Maximum Community Spouse Income Allocation to \$7,794 effective August 1, 2002, within 10 days of the date of this Decision.

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 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 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
Madison, Wisconsin, this 1st day of
October, 2002

/sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals
1014/GMW