



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

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In the Matter of  
  
(petitioner)

DECISION

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MRA-64/61520

**PRELIMINARY RECITALS**

Pursuant to a petition filed January 22, 2004, 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 February 25, 2004, at Elkhorn, Wisconsin.

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

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:  
  
(petitioner)

Represented by:  
  
Julie Juranek  
Community Action  
1545 Hobbs Drive  
Delavan, WI 53115

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: Pat Sharp, ESS  
Walworth County Dept. Of Human Services  
W4051 County Rd. NN  
Elkhorn, WI 53121-1006

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Walworth County. He entered a nursing home on October 3, 2003. His wife resides in the community.
2. An application for nursing home MA was filed on petitioner's behalf on December 11, 2003, seeking MA back to November 1, 2003.

3. On January 9, 2004, the county sent petitioner a notice informing him that he was eligible for nursing home MA, but he had a monthly cost of care of \$3,764.
4. Petitioner receives \$807 per month social security. He and his wife also receive monthly land contract payments of \$6,400 for a business they formerly owned. The county assigned half of that amount to petitioner's wife.
5. Petitioner's wife was given a monthly income allocation of \$2,319. Because her \$3,200 income was over the \$2,319 income allocation, none of petitioner's income was allocated to her, so his cost of care was based on \$4,007 monthly income minus the \$45 personal needs allowance and \$198 health insurance cost.
6. Petitioner's wife's monthly expenses total \$4,500 per month.

### DISCUSSION

Wis. Stat., §49.455 is the Wisconsin codification of 42 U.S.C. s.13964-5 (MCCA). Among other things, the "spousal impoverishment" provisions at sec. 49.455 direct the Department to establish an income allowance for the community spouse of an institutionalized person. That allowance set by the county, based upon petitioner's housing costs, is \$2,319. See MA Handbook, Appendix 23.6.0; \$2,319 is the maximum amount of the community spouse allowance. The institutionalized person may divert some of his income to his community spouse rather than contributing to his cost of care. The amount of the diverted income, when combined with the spouse's income, cannot exceed the maximum allocation determined by the county. Any income of the institutionalized spouse that is not allocated to the community spouse or the personal needs allowance must be paid to the nursing home as the person's cost of care share.

A fair hearing officer can grant an exception to this limit on income diversion. 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.

I have reviewed the expenses for petitioner's wife. I conclude that her monthly income allocation may be raised to \$4,500. That appears to be a huge amount, but I believe it is justified. Unusually large monthly expenses that cannot be avoided are a \$1,570.56 mortgage payment, \$472.84 car loan, \$330 property taxes on the land contract property, health insurance for petitioner's wife of \$325.13, utilities and septic totaling \$351.79, car and home insurance totaling \$147.23, Medicare Part B \$66, and telephone \$54.83. Those figures total \$3,318.38. Add in \$200 for groceries and \$100 for gas for the car (the gas expense is high due to travel to the nursing home), and basic expenses are \$3,618.38. Then add in three charge card minimum monthly payments totaling \$440 and basic expenses are \$4,058.38.

Finally, petitioner's wife is saddled with additional debts with unspecified monthly charges. The land contract partner/buyers are in litigation over the terms of the contract, and petitioner's wife had to retain an attorney to represent her interests. At present she owes \$3,300 to her attorney, with an estimate that it could rise to \$5,000. She owes \$900 to the American Arbitration Association for the same litigation, and \$1,685 to the Mayo Clinic for medical expenses not covered by insurance. Petitioner's wife did not even include in her budget clothes, shoes, and incidentals such as hair care and home maintenance. I am giving her approximately \$440 to cover all those extra expenses. Petitioner's wife also owes some \$13,000 to the nursing home, but much of that amount will be covered if petitioner's cost of care is lowered.

I conclude that petitioner's wife's monthly income allowance should be raised to \$4,500 effective November 1, 2003. That will in turn reduce petitioner's cost of care by \$2,181, meaning that cost of care will be reduced to \$1,583.

Petitioner left the nursing home on February 1. The parties asked if this new allocation would remain effective if he re-enters the nursing home. It should stay effective unless income or expenses change substantially.

### **CONCLUSIONS OF LAW**

Petitioner's wife needs \$4,500 monthly income to avoid financial duress.

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

That the matter be remanded to the county with instructions to increase the monthly income allocation of petitioner's wife to \$4,500, retroactive to November 1, 2003. The county shall take the action within 10 days 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 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). The appeal must be served on the 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 2nd day of  
March, 2004

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/s/Brian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals  
0301/bcs