



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-32/75418

PRELIMINARY RECITALS

Pursuant to a petition filed February 28, 2006, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the La Crosse County Dept. of Human Services in regard to medical assistance, a hearing was held on May 19, 2006, at La Crosse, Wisconsin. A hearing scheduled for April 10, 2006, was rescheduled at the petitioner's request.

The issue for determination is whether the petitioner's community spouse income allocation can be increased.

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: Carman Mashak, ESS
La Crosse County Dept Of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES #xxxxxxxxxx) resides in La Crosse County.
2. The county agency set the petitioner's spousal allocation on February 24, 2006. His spouse seeks an increase in that allocation.

3. The petitioner receives medical assistance through one of the Waivers programs. He lives with his spouse in their home but has been in and out of the nursing home. He was last in the nursing home from December 2005 through February 2006.
4. The petitioner's wife earns \$2,281.50 in gross income each month from (redacted). The following is deducted from this amount:
 - a. Federal Taxes \$144.43
 - b. Medicare \$130.93
 - c. Wisconsin Taxes \$98.63
 - d. Disability Insurance \$2.21
 - e. Health Insurance \$139.56
 - f. Dental Insurance \$30.03
 - g. 403B \$68.45
5. The petitioner's wife also earns \$637.50 from self-employment each month. She pays \$114.75 in taxes on that income.
6. The petitioner receives \$806 per month in social security.
7. The petitioner's spouse lists the following household expenses:
 - a. House payment \$600
 - b. Second mortgage \$100
 - c. Home insurance \$93
 - d. Heating \$250
 - e. Telephone \$58.57
 - f. Cable TV \$63
 - g. XCel energy \$125
 - h. Taxes \$258
 - i. Food \$300
 - j. Medicine \$35
 - k. Clinic payment \$80
 - l. Chiropractor \$50
 - m. Life insurance \$89
 - n. Payments on charge cards \$175
 - o. Cell phone \$19
 - p. Haircut \$18
 - q. Entertainment \$30
 - r. Church \$50
 - s. Lunches at work \$35
 - t. Clothes \$50
 - u. Cosmetology license \$5.91

v. Auto insurance	\$66
w. Gas	\$175
x. Oil Change	\$25
y. License	\$10
z. Car payment	\$174.39
aa. Lawn mower gas	\$20
bb. Sewer products	\$25

8. The petitioner requires \$150 per month for her own food.

DISCUSSION

Medical assistance rules require nursing home residents to “apply their available income toward the cost of their care.” Wis. Adm. Code § HFS 103.07(1)(d). However, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of an institutionalized person so that the spouse does not fall into poverty. *See* Wis. Stat. § 49.455 and 42 U.S.C. §13964-5. A person receiving funds through one of the waivers programs is considered institutionalized. *Medical Eligibility Handbook*, §5.10.2.3. The minimum monthly maintenance needs allowance currently is the lesser of \$2,488.50 or \$2,138.33 plus excess shelter costs. *Medical Eligibility Handbook*, § 5.10.6. Excess shelter costs are shelter costs above \$641.50. *Id.* The county agency set the petitioner’s spouse’s needs at \$2,488.50, and allocated \$212.25 of the petitioner’s income to her. As long as the petitioner is in the home, none of this matters because his income is available for both of them. However, he has been in and out of the nursing home recently, and it appears likely he will be in again. Therefore, I will determine this matter on the merits.

The needs allowance 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 administrative law judge’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).

Wis. Stat. § 49.455(8)(c). 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 county lists the spouse’s income as \$2,276.25. She points out that because she is working she has a number of deductions taken out of her paycheck and pays taxes on self-employment income earned from a second job. This causes her net income to be less than what she is actually paid. She is correct that she has deductions, but it appears that the county did not include \$637.50 she earns from self-employment each month. Thus her gross income is actually over \$2,900 per month. Regardless, her net income is all that is available to pay her expenses. The deductions from her paycheck could be viewed as expenses that are part of her monthly needs or could be excluded from her income. If they are considered as expenses

her minimum monthly needs would change each time her income changes, which could be often because of her self-employment. This could lead to frequent hearings to adjust the allowance. Therefore, I will order that only her net income should be considered when setting the allocation.

The petitioner lists \$2,984.87 in total monthly expenses. However, not all of these expenses are necessary to meet her minimum monthly needs. She lists \$300 a month for food, but this presumably includes what her husband eats. Because there is no basis to allocate his income to her to pay for his food, only half of that amount can be considered. Nor is cable television necessary, especially for anything beyond basic services. I will subtract \$30 from this expense, which should be enough to cover basic services. A cell phone is not a necessary expense, but the petitioner probably is obligated to pay for the service even if she would no longer receive it, so I will allow it. As noted earlier, church donations are never allowed as an expense, so the \$50 attributed to this cannot be considered. Finally, I question how one can spend \$20 per month on gas for a lawnmower but will allow it because it is less than one would pay to hire someone to mow the lawn. The remaining expenses are necessary. Thus the petitioner requires \$2,754.87 per month to meet her minimum monthly needs.

CONCLUSIONS OF LAW

The petitioner's wife needs \$2,754.87 monthly income to avoid financial duress.

NOW, THEREFORE, it is ORDERED

That this matter is remanded the county agency with instructions that within 10 days of the date of this decision it set the petitioner's spouse minimum monthly needs allowance at \$2,754.87 when determining how much of the petitioner's monthly income may be allocated her. When making this allocation, the agency shall not consider as available to the spouse any deductions taken from her paycheck or taxes she pays on her self-employment income. The agency shall consider both wage and self-employment income when setting the allocation. This decision shall be retroactive to December 1, 2005.

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 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 Eau
Claire, Wisconsin, this 26th day of June,
2006

/sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals
824/MDO