



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-30/86083

PRELIMINARY RECITALS

Pursuant to a petition filed July 24, 2007, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Kenosha County Dept. of Social Services in regard to Spousal Impoverishment Medical Assistance (MA), a hearing was held on September 5, 2007, at Kenosha, Wisconsin. The record was held open for the submission of more detailed monthly expenses by the Community Spouse.

The issue for determination is whether the community spouse is eligible for an increase in the Community Spouse Income Allocation in order to continue meeting her basic maintenance needs in the community.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Respondent:

Wisconsin Department of Health and Family Services
1 West Wilson Street, Room 650
P.O. Box 7850
Madison, WI 53707-7850

By: Thomas Buening, ESS
Kenosha County Human Service Dept
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Kenneth P. Adler
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #xxxxxxxxxx) is a married resident of Kenosha County who resides in a skilled nursing facility. His spouse continues to reside in the community.
2. Petitioner is eligible for spousal impoverishment MA. He has gross monthly income of \$1,962.92.

3. On 7/16/07 the county agency issued a notice of decision informing petitioner cost of care contribution would be reduced from \$307.45 to \$225.78 effective 8/01/07.

The budgeting was as follows:

Community Spouse income allowance (CSIA)	\$2,281.60
<u>Community Spouse gross income</u>	<u>\$ 589.50</u>
Community Spouse income allocation	\$1,692.15
Petitioner gross income	\$1,962.92
Community Spouse income allocation	\$1,692.15
<u>Personal allowance</u>	<u>\$ 45.00</u>
Petitioner patient liability	\$ 225.78

4. The community spouse presents the following monthly expenses:

Property taxes	\$250.00
Homeowner's insurance	\$ 42.17
Utility bills (gas & electric)	\$200.00
Water	\$ 30.00
Cable/phone/internet	\$112.00
ADT security service	\$ 32.81
House cleaner	\$ 75.00
Food & supplies	\$300.00
Newspaper	\$ 17.75
Church	\$ 20.00
Gas (car)	\$150.00
Car repairs & registration	\$ 40.00
Car insurance premium	\$ 55.00
Life insurance premiums (3 total)	\$ 26.70
Credit card bills (clothes & household items)	\$150.00
Wife's medical care (co-pays, prescript, equip)	\$ 97.58
Husband's medical care (co-pays, patient liability)	\$ 60.20
Recreation (dining out, movies, travel)	\$155.83
New drapes (monthly bill until December 2007)	\$300.00
Dental bill (\$2,809 owed)	\$158.53
Christmas fund	\$ 40.00
Total	\$2,313.57

Future predicted monthly expenses:

New car in 2008 (\$20,000)
New hearing aids (\$2,750)

DISCUSSION

The issue for determination is whether the community spouse is eligible for an additional income allocation from her institutionalized spouse. The community spouse presents a large number of monthly expenses. However, the issue is whether the monthly obligations listed by the community spouse represent

“exceptional circumstances resulting in financial duress” requiring an additional income allocation from her husband exceeding the statutorily established amount. The term "exceptional circumstances resulting in financial duress" is defined as situations which result in the community spouse being unable to provide for his or her own necessary and basic maintenance needs. Wis. Admin. Code §HFS 103.075(8)(c), Wis. Adm. Code; see also, *Medicaid Eligibility Handbook*, 5.10.6, Section A.

The Minimum Monthly Maintenance Needs Allowance (MMMNA) is the established amount the MA program allows a community spouse based upon what has been determined necessary to allow that spouse to continue residing in the community. Currently the MMMNA is the *lesser* of \$2,541.00 per month, or \$2,281.67 plus the amount of shelter expenses incurred each month by the community spouse which exceed \$684.50, known as the "excess shelter allowance". Wis. Stat. §49.455(4)(b), *Medicaid Eligibility Handbook*, 5.10.6, Section A. The MMMNA is a general number considered to be the amount of monthly income the spouse of an institutionalized individual requires to continue residing in the community and meeting his or her *basic* maintenance needs.

The Community Spouse Income Allocation (CSIA) is the amount which a particular community spouse is determined to need to continue residing in the community and may actually exceed the MMMNA. The CSIA is defined as the greater of the MMMNA or an amount determined by a fair hearing. Wis. Stat. §49.455(4)(b).

Administrative law judges have the authority to increase the CSIA above the MMMNA where the MMMNA is insufficient to meet a particular community spouse’s *basic* maintenance needs. Wis. Stat. §49.455(8)(c); Wis. Admin. Code §HFS 103.075(8)(c);), *Medicaid Eligibility Handbook*, 5.10.6, Section A. However, an increase in the CSIA above the MMMNA can be made through the fair hearing process only if it is established that the community spouse requires income above the level provided by the MMMNA due to the existence of "exceptional circumstances resulting in financial duress" for the community spouse. Wis. Stat. §49.455(8)(c); Wis. Admin. Code §HFS 103.075(8)(c).

Upon review of the information in Exhibit 1 as referenced in Finding of Fact #3 I find almost all the expenses presented to be reasonable and necessary to meet the basic needs of residing in the community. However, I do not find the following expenses to be necessary to meet the spouse’s ability to continue to reside in the community.

Newspaper	\$ 17.75
Church	\$ 20.00
Recreation (dining out, movies, travel)	\$155.83
New drapes (monthly bill until December 2007)	\$300.00
Christmas fund	\$ 40.00
Total	\$533.58

Prior decisions of this office have noted that income which the institutionalized spouse diverts from his own cost of care contribution to increase the monthly income of his community spouse is essentially asking the MA program to support the community spouse as it will have to make higher payments to the institution based upon the income diverted from that obligation to pay for the community spouse’s obligations. Therefore the law requires a strict look at what items are necessary for the spouse to reside in the community. I have already allowed the expense for internet/cable and phone thereby making a newspaper duplicative. The church and Christmas fund must also be excluded as, again, viewed as essentially giving gifts at expense to the MA program. The recreation and dining out and new drapes also fall into this category.

Taking the above expenses (\$533.58) and removing them from the monthly budget results in a reduction from \$2,313.57 to \$1,779.99. This amount is clearly below the current maximum of \$2,281.60. In addition, the anticipated expenses for a new car (which would be considered necessary to continue residing in the community) as well as new hearing aides cannot be considered until those expenses are actually incurred and verified to be a monthly responsibility.

Based upon the above, I conclude the community spouse is not eligible for an additional allocation from petitioner in order to continue residing in the community at this time as her total allowable monthly expenses do not exceed the \$2,281.60. However, as explained above, if the community spouse incurs future expenses considered necessary to continue residing in the community she should contact the county agency for a redetermination of her income allocation from her husband.

It should also be noted that the above information is based upon the July 16, 2007 notice of decision which determined eligibility effective August 1, 2008. Petitioner's spouse appealed that notice of decision on July 24, 2008. A new, lower, patient liability was calculated effective September 2008 based upon the July 2007 increase in the Federal Poverty Level which affected some of the *income* figures. However, that information does not change the underlying decision in this case which is based upon the community spouse's monthly *expenses*.

CONCLUSIONS OF LAW

That petitioner's community spouse does not currently require an increase in the Community Spouse Maximum Income Allocation above the current statutory limit of \$2,281.60.

NOW, THEREFORE, it is ORDERED

That petitioner's appeal be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge 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.

To ask for a rehearing, 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 for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wisconsin Statutes § 227.49. 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 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to Circuit Court, the Respondent in this matter is the Wisconsin Department of Health and Family Services. Appeals must be served on the Office of the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 650, 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 appeals to the Circuit Court is in Wisconsin Statutes §§ 227.52 and 227.53.

Given under my hand at the City of
Milwaukee, Wisconsin, this 17th day of
December, 2007

/sKenneth P. Adler
Administrative Law Judge
Division of Hearings and Appeals
115/KPA