



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

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In the Matter of

(petitioner)

DECISION

MRA-11/88052

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 16, 2007, under Wis. Stat. §49.45(5) and Wis. Admin. Code §HA 3.03(1), to review a decision by the Columbia County Dept. of Social Services in regards to the petitioner’s Medical Assistance (MA), a hearing was held on November 14, 2007, at Portage, Wisconsin.

The issue for determination is whether the petitioner’s community spouse may have an increase in her income allocation.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Represented By:

(petitioner's spouse)

Respondent:

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

By: Kelly Kreuger, ESS,  
Columbia County Health & Human Services  
2652 Murphy Rd  
PO Box 136  
Portage, WI 53901

**ADMINISTRATIVE LAW JUDGE:**

Kenneth D. Duren  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES #xxxxxxxxxx) is an institutionalized resident of Columbia County. He receives Institutional - MA, and his eligibility began in August, 2007. His wife, (redacted), lives in the community.
2. On or about October 15, 2007, the county agency determined that the petitioner’s gross monthly income is \$1,678; his community spouse’s gross monthly income is \$2,493.98; and that, after allowable deductions for personal needs (\$45) and “other deductions” (\$159.95), the petitioner’s monthly cost of care (patient) liability, effective September, 2007, was \$1,473.05 and \$0 would be allocated to his community spouse because her gross monthly income exceeded the maximum

monthly income allowance of \$2,479.83. See, Exhibits #4 & #5; and see, Exhibits #A-1 and #A-2.

3. Also on October 15, 2007, the agency issued a second Notice to the petitioner's community spouse stating that the same calculations were applicable.
4. On October 16, 2007, the petitioner filed an appeal with the Division of Hearings & Appeals requesting that some of the petitioner's available monthly income be allocated to his community spouse because she needed it to meet her necessary and basic maintenance needs.
5. The community spouse's monthly necessary and basic maintenance expenses, based upon the record, are as follows:

<b>EXPENSE TYPE</b>	<b>BALANCE DUE (for credit cards and medical expenses only)</b>	<b>PAYMENT</b>
Mortgage		\$539
Heat/Electric		\$105
Water/Sewer		\$ 36
Telephone		\$ 29
Home/Car Insurance		\$ 97
Vehicle Service Contract		\$127
Property Taxes (Pro-Rata)		\$132
Life Insurance (Karl-Insured)		\$ 46
Gasoline		\$330 (est.)
Groceries, Supplies, Toiletries		\$330 (est.)
Vehicle Maintenance		\$ 75
Entertainment		\$ 50
Supp. Health Insurance (Barb)		\$131
Prescriptions ( Barb)		\$ 81
Radiologist Bill	\$ 1,000	\$ 92
Pathologist Bill	\$ 645	\$ 65 (est.)
Dean Health Balance	\$ 9,944.77	\$150
American Express Credit Card	\$ 960	\$100
Visa Chase Credit Card	\$ 9,152.78	\$183 (est. @ 2% balance)
AARP Chase Credit Card	\$11,074	\$230
Mastercard Chase Credit Card	\$ 2,867.98	\$ 58 (est. @ 2% balance)
Misc. Debt – Additional Allowance for Debt Reduction		\$ 500

<b>TOTAL:</b>		\$3,486
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See, Exhibit A, 1-5.

6. The community spouse's total known debt load from credit card balances and medical bills, listed above in the middle column, is \$35,644.53.
7. The community spouse's listed monthly expenses for: Dish Network - \$77; Life Insurance (Barb as Insured) - \$97; Gifts - \$50; and Incidentals for Karl -\$50; are not necessary and basic monthly maintenance expenses and were disallowed and excluded from the budget, above. In addition, her listed groceries, et. al. expenses, and gasoline expenses, are not documented and are reduced to \$330 per month, each, from the claimed \$430, each.

### DISCUSSION

Wis. Stat. § 49.455 is the Wisconsin codification of 42 U.S.C. §§ 13964 - 5 (MCCA). Among other things, the "spousal impoverishment" provisions at § 49.455 direct the Department to establish an income allowance for the community spouse of an institutionalized person. That allowance set by the county, is \$2,479.83. See, MA Handbook, Appendix § 5.10.6. 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, under state policy and law. 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.

An administrative law judge (ALJ) can grant an exception to this limit on income diversion. The ALJ may increase the income allowance following a fair hearing. The ALJ 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). Thus an ALJ 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. The community spouse has produced a fairly detailed monthly budget. The credit card expenses appear to be higher than those prevailing in a typical household, and at a minimum, she is required to pay the minimum monthly amounts or risk collection actions or civil suits. Where she did not provide monthly payment amounts, I have estimated monthly payments at 2% of the balance due. Likewise, she owes a substantial amount of medical expense-related debt arising from her husband's past medical treatment. Together, these debts total \$35,644.53. Her stated groceries, et. al, at \$430, and gasoline expense at \$430, seem a little high for a one person household. I have reduced each in the budget to \$330 per month. I also cannot consider the premium on a life insurance policy held on her life (\$97), as basic and necessary maintenance expenses. Such a policy does nothing to meet her basic maintenance. Likewise, I will not allow the expense listed for a satellite television service, as it is not necessary for basic needs where free broadcast television is available. The \$50 gift line item is also not a

basic maintenance expense. Finally, the \$50 listed for incidentals for the institutionalized spouse is not a basic maintenance expense for the community spouse. His incidentals are contemplated to be paid for by the \$45 personal needs allowance. These monthly expenses are excluded. I note that all other expenses listed are reasonable, basic and necessary. In addition, I have allowed \$500 per month in this budget for overall debt reduction to allow the community spouse the opportunity to make additional payments on the medical debts and credit card balances.

After making these modifications, based on the record presented, I conclude that her allowable expenses actually total \$3,486 per month. Her financial picture is clearly under duress given the large unsecured debt for medical expenses and consumer credit, and her gross income of \$2,493.98. Given the community spouse's gross income of \$2,493.98, the difference is the amount to be allocated to her. ( $\$3,486$  [basic and necessary monthly maintenance needs] -  $\$2,493.98$  [gross income] =  $\$992.02$  [community spouse income allocation]).

I conclude that the community spouse's minimum monthly maintenance needs allowance is to be increased to a total of \$3,486 per month. The result is that petitioner's cost of care liability is to be reduced to \$481.03, retroactive to the first month of cost of care liability under the instant application. This Decision contemplates that the allocation will be time limited to 3 calendar years, with the anticipation that the community spouse will reduce the family's debts during this period. At the end of 3 years, the agency is to review the allocation under the then prevailing law. If the petitioner and his community spouse are again aggrieved at that future date, they may request a *new* hearing at that time.

### **CONCLUSIONS OF LAW**

That the petitioner's wife minimum monthly maintenance needs allowance is to be increased to a total of \$3,486 per month, effective September, 2007, and continuing through August, 2010, in order for her to avoid financial duress.

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

That the matter is remanded to the county agency with instructions to: increase the community spouse's minimum monthly maintenance needs allowance from \$2,479.83 per month to a total of \$3,486 per month, effective September 1, 2007; refund to the community spouse any overpayments of patient liability made by the petitioner retroactive to September 1, 2007, arising as a consequence of this decision; and apply this allowance (MMMNA) level through August, 2010, after which it shall be subject to review and re-determination by the county agency under standard Department policy then-prevailing. The actions shall be completed within 10 days of the date of this Decision.

### **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  
Madison, Wisconsin, this 19th day of  
November, 2007

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/sKenneth D. Duren  
Administrative Law Judge  
Division of Hearings and Appeals  
115/KDD