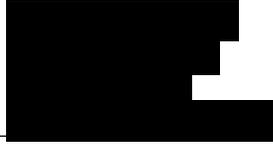




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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MRA/134234

PRELIMINARY RECITALS

Pursuant to a petition filed July 26, 2011, under Wis. Stat. § 49.45(5), and Wis. Admin. Code §HA 3., to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a hearing was held on November 08, 2011, at La Crosse, Wisconsin. Hearings scheduled for September 6, 2011, and October 4, 2011, were rescheduled at the petitioner's request..

The issue for determination is whether the petitioner can allocate additional money to his spouse who remains in the community in order to meet her minimum monthly needs.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Vicki Anger

La Crosse County Department 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 # ) is a resident of La Crosse County.

2. The petitioner receives \$2,735 and his spouse receives \$2,084 per month from pensions and social security.
3. The county agency set the petitioner's share of his medical costs at \$1,995.25 per month.
4. The petitioner's wife lists the following monthly expenses totaling \$2,570.32:

a. Mortgage, 2 nd mortgage, insurance, taxes	\$1,138
b. Utilities	\$199
c. Home repair & upkeep	\$100
d. Car Insurance	\$55.91
e. Car repair	\$50
f. Car payment	\$200
g. Gas for car	\$135
h. Clothing	\$150
i. Pet services	\$125
j. Groceries	\$500
k. Credit cards	\$300
l. Health Insurance	\$165
m. Life insurance	\$200
n. Medication	\$45
o. Phone, internet, cable, entertainment	\$175
p. Beauty shop	\$110
q. Charity	\$125
r. Gifts	\$125
s. Chiropractor	\$25
t. Dentist	\$42
u. Miscellaneous expenses	\$75
v. Set aside for income taxes	\$75
5. The average food monthly food cost for a moderate diet for a woman between 51 and 70 living in a four-person household is \$243.10. Costs are 20% higher for those living alone. <http://www.cnpp.usda.gov/Publications/FoodPlans/2011/CostofFoodOct2011.pdf>.
6. The petitioner seeks to reduce his share of his medical costs and increase the amount he allocates to his spouse each month.

DISCUSSION

Medical assistance rules require nursing home residents to “apply their available income toward the cost of their care.” Wis. Adm. Code § DHS 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 she does not fall into poverty. *See* Wis. Stat. § 49.455 and 42 U.S.C. §13964-5. The minimum

monthly maintenance needs allowance currently is the lesser of \$2,739 or \$2,451.67 plus excess shelter costs. *Medical Eligibility Handbook*, § 18.6.2. Excess shelter costs are shelter costs above \$735.50. *Id.*

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., DHA Decision Nos. MRA-45/#22021, MRA-32/22456, MRA-05/37611, MRA-13/45972, and MRA-14/22543.*

The petitioner receives \$2,735 and his spouse receives \$2,084 per month from pensions and social security. The county agency set his share of his medical costs at \$1,995.25 and determined that his spouse's minimum monthly needs were \$2,739, the most it could allow without a hearing. She submitted a budget showing \$4,039.91 in expenses each month. However, this included \$250 for gifts and charity, \$110 for beauty shop visits for her and the petitioner, \$150 for their clothing, \$500 for groceries, and \$125 for pet care. She has the burden of proving that these costs are necessary. I note initially that the minimum monthly needs allowance pertains only to her needs and therefore any amounts requested for the petitioner's needs are not allowed.

I cannot allow the \$250 requested for gifts and charity. In addition, while I understand her need to maintain her appearance, \$50 a month for beauty care is reasonable because much of the requested \$110 goes for her husband's grooming. Likewise, the \$150 per month she requests for clothing includes purchases for both of them. Even \$75 is a significant amount for clothing, but she did testify that they both lost a great deal of weight due to the stress of his illness, so I will allow \$75 per month. Her request for \$500 per month for food is excessive for one person. United States Department of Agriculture figures indicate that the average woman between 51 and 70 who lives alone requires \$291.76 for a moderate diet. I understand that she will probably have to eat out in order to have time to see her husband. Allowing this, I find that \$350 is a reasonable amount for all of her food. Finally, although having a pet can provide needed companionship for a person in her situation, \$125 per month for the pet's food, veterinarian, and grooming costs is excessive. The petitioner did not state what kind of a pet she had, but I find that until she presents more evidence, \$75 per month is sufficient. Subtracting the \$605 discussed here from her proposed budget leaves her minimum monthly needs at \$3,433.91. I will remand this to the county agency with instructions to allocate a sufficient amount of the petitioner's income to meet this amount.

If the petitioner's income or expenses change, she should report this to the county agency. If her needs increase, she will have to file for a new fair hearing.

CONCLUSIONS OF LAW

The petitioner requires \$3,433.91 to meet her minimum monthly needs each month..

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 reduce the petitioner's share of his medical costs so that he can allocate a sufficient amount of his income to his spouse so that she can meet her \$3,433.91 minimum monthly needs. This decision shall be retroactive to the date the petitioner was first required to pay a share of his nursing home costs. However it shall not take effect more than three months before the first day of the month that the petitioner filed this appeal.

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 Wis. Stat. § 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 with the appropriate court 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).

Appeals to Circuit Court should name the Department of Health Services as the respondent. After filing the appeal with the appropriate court, it 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 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

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 Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 6th day of December, 2011

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

c:

