



expenses in the nursing home. Prior to the petitioner's husband's current employment, all of the petitioner's income (other than her personal needs) was allocated to her husband to meet the \$1,605 figure.

3. In July of 2005, the petitioner reported to DCF that her husband was earning \$1,139.50 per month from a paper route. A contract with the paper company showed that the husband was expected to have expenses of \$496.65 in gas and car depreciation based on the length of his route. DCF used that figure to obtain a net earnings figure of \$642.85 per month from the paper route. This new income prompted DCF to recalculate the patient share in July of 2005. Because the petitioner's husband's income based on his Social Security and net income was only \$1,415.05, the husband could receive the amount of the difference between his income and the maximum allocation of \$1,605 or \$189.95 from his wife's income for his expenses. DCF deducted that \$189.95 spousal allowance from the petitioner's own income of \$576 as well as her personal needs amount of \$47.66. The remainder, \$338.39, was determined to be due to DCF as the petitioner's patient share.

4. The petitioner was notified of the increase in a notice dated July 26, 2005 effective in September of 2005.

5. The petitioner appealed that decision for two reasons. The first is that his monthly expenses are \$2,436 per month (including the patient share, a hefty car payment (\$399 per month), car insurance and payments on loans). The second is that his expenses involved in earning his income are actually greater than the mileage allowance he receives from his employer.

6. The petitioner was informed that he could present evidence of her husband's actual expenses to DCF to obtain an adjustment of his net income figure. The petitioner did not submit any additional evidence as part of this hearing.

ORDER

The decision of DCF establishing an increased patient share is affirmed.

REASONS

DCF's Medicaid regulations count the earned and unearned income of both the institutionalized spouse and the community spouse when determining allocations to be made to the community spouse and the patient share amount to be paid by the institutionalized spouse. M243. The earned income of a self-employed person is the gross income less deductions

for the operating costs necessary to earning the income.  
M241.11 and M245.11(a).

From the total countable income of the spouses, the community spouse is allowed to keep an amount equal to 150 percent of the federal poverty level for two which at this time is \$1,604 per month. M432.31, P-2420. If the community spouse's shelter costs exceed 30 percent of that amount, the amount in excess of 30 percent can be added on to the monthly allocation. M432. The institutionalized spouse is allowed to keep a personal needs amount which at present is \$47.66 per month. M432, P-2420, B(6). Any amount the community spouse may earn is deducted from the allocation. M432. Any amount left over after allocations to the community spouse and the personal needs of the institutionalized spouse constitutes the amount to be paid to the nursing home as the "patient share." M432.

In this case, the petitioner's spouse in the community has income from Social Security of \$772.20 per month and apparent net income from earnings of \$642.85. This amount totals \$1,415.05 and thus entitled the community spouse to a payment from the petitioner's income equal to an amount needed to raise his income to \$1,604 per month. The petitioner was not entitled to any amount over \$1,604 because

his low housing expenses did not exceed 30 percent of his allocation. However, even after the petitioner paid her husband \$189.95 to bring him up to \$1,604 and paid herself \$47.66 for personal needs, she still had \$338.39 left which forms the amount of the patient share. DCF was correct under the above regulations in its determination of the amount of the patient share due and its decision must be upheld by the Board. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

The petitioner was advised to bring any evidence she could (such as gas receipts) showing that her husband actually had more self-employment expenses than calculated by DCF so the patient share amount could be adjusted. If he has further expenses, the petitioner is encouraged to provide them to DCF at once for a recalculation.

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