



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/170778

PRELIMINARY RECITALS

Pursuant to a petition filed December 15, 2015, under Wis. Stat., §49.45(5)(a), to review a decision by the Milwaukee Enrollment Services to discontinue Medical Assistance (MA), a hearing was held on January 20, 2016, by telephone.

The issue for determination is whether the agency correctly budgeted petitioner’s husband’s income for BadgerCare Plus (BC+) MA purposes.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By:
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Milwaukee County.
2. Petitioner resides with her husband, who is ineligible for MA because of his citizenship status. Petitioner’s husband is self-employed. Petitioner was eligible for BC+ in 2015 based upon her husband’s 2013 self-employment income.
3. Petitioner needed to complete a BC+ review before December 1, 2015; she completed it on November 30, 2015. The agency requested and received petitioner’s husband’s 2014 self-

employment tax return. His net income was \$31,511, which the agency divided by twelve to get monthly income of \$2,625.92. That amount was compared to the BC+ income limit.

4. By a notice dated December 1, 2015, the agency informed petitioner that BC+ was denied because income was over the BC+ limit.

DISCUSSION

Prior to April 1, 2014, the income limit for BC+ was 200% of the FPL. State law changed effective April 1, 2014 following the passage of 2013 Wisconsin Act 20. As of that date the limit for a two-person household is \$1,327.50. See Wis. Stat., §49.471(4)(a)4.b for the new law, and the BC+ Handbook, Appendix 50.1 for the limit. The new law also changed how income is budgeted. Now income is budgeted based upon tax relationships as well as family relationships, and income is based upon taxable income under Modified Adjusted Gross Income (MAGI) rules. Handbook, §2.8.2, definition of “MAGI.”

Prior to the introduction of MAGI rules certain business expenses including depreciation and loss carryovers were not allowed in self-employment income and had to be added back in to net income when determining the person’s income for MA purposes. Under MAGI rules those deductions are allowed. Under MAGI the only self-employment expenses not allowed are charitable donations, work-related personal expenses (such as transportation to and from work), and expenses such as pension benefits and retirement programs for the business owner. BC+ Handbook, §16.4.3.2.3.

Thus in 2015 the agency determined monthly self-employment by taking net income on the person’s tax return and dividing by twelve. Handbook, §16.4.3.2.1. If there is a change in the business the agency may use monthly self-employment reports instead of the prior year’s income, but in this case petitioner acknowledges that, if anything, her husband is making more money now than in 2014.

Unlike FoodShare, where income from a non-eligible household member is deemed to the eligible members, for BC+ all income of a non-eligible household member is counted as long as the member is required to be part of the fiscal unit. Petitioner and her husband must be considered the same fiscal test unit because they are married, and thus petitioner’s husband’s entire monthly income is counted for BC+ purposes, against the income limit for a two-person household. See Handbook, §§2.3.2.1 and 2.8.2.

Under these rules petitioner is ineligible for BC+ because household income is over the limit. Petitioner testified that they cannot afford insurance for her, but there is nothing in the BC+ rules allowing for exceptions to the income limits for good cause reasons. I must conclude, therefore, that the agency correctly closed petitioner’s BC+ eligibility when her husband’s 2014 self-employment income was budgeted.

CONCLUSIONS OF LAW

The agency correctly closed petitioner’s BC+ eligibility based upon her household income being over the limit after her husband’s most recent self-employment income figures were budgeted.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 25th day of January, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 25, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability