



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



**DECISION**  
Case #: BCS - 174442

**PRELIMINARY RECITALS**

Pursuant to a petition filed on May 17, 2016, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on July 13, 2016, by telephone.

The issue for determination is whether the tax filing status and MAGI rules were correctly applied to this case relating to financial eligibility for BC+ following petitioner’s new marriage.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By:   
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. Petitioner was an ongoing recipient of BC+ benefits.

3. In May 2016 petitioner completed a renewal and reported a new spouse. Her spouse has two children who spend 50 percent of their time in the home with their mother, and 50 percent of the time in the home with petitioner and their father. Those two children receive BC+ coverage on a separate case with their birth mother. The agency budgeted the new income from the spouse but did not include the spouse's two children in the FS or the BC+ group for financial eligibility purposes.
4. The agency recalculated BC+ eligibility as a household of 4 persons with a monthly counted income of \$4,250 and determined that petitioner was to be placed in an extension status and is now liable for a premium of \$268 as of June 1, 2016.
5. Petitioner appealed.

### **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 caretaker parents was reduced to 100% of the FPL, which, for a three-person household is \$1,674.17. 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, App. 2.8.2, definition of "MAGI." The changes occurred as of April 1, 2014 for new applicants, and when current recipients completed reviews. Under the new MAGI rules, parents' financial eligibility is determined along with their *spouses* and any children who are claimed as dependents on the parents' tax returns. BC+ Handbook § 2.3.2.1.

Petitioner argues that the household was incorrectly considered a 4 person household for the BC+ financial eligibility determination. Petitioner argued that her husband claims one of the children as a dependent each year, with the children alternating from mother to father in each tax year.

At the time of hearing, the agency representative explained that no tax filing information had been provided to the agency and that the agency had calculated eligibility with the understanding that the mother claimed both children as dependents. Petitioner's husband explained that he could provide the court order relating to the tax filing status of the children. The agency agreed that if the children indeed alternate from year to year that the household could be analyzed as a 5-person household for financial eligibility and premium purposes.

### **CONCLUSIONS OF LAW**

If petitioner's husband claims one of his biological children in each given year as a dependent, then the household should be analyzed for financial eligibility for BC+ as a 5-person household.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency with instructions to request tax filing status verification for the children and other necessary verification and determine whether either or both of the husband's children should be counted as household member for financial eligibility purposes. Financial eligibility and any premium liability shall be redetermined based on any new information provided under program rules. The redetermination shall be applied retroactively to June 1, 2016. New notices of the actions shall be provided to petitioner with new appeal rights. These actions shall be completed within ten days of this decision.

**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, **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 1st day of September, 2016

\s \_\_\_\_\_  
John P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 1, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability