



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCC/141670

PRELIMINARY RECITALS

Pursuant to a petition filed June 18, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Sheboygan County Department of Human Services in regard to Medical Assistance, a hearing was held on September 25, 2012, at Sheboygan, Wisconsin.

The issue for determination is whether the agency properly budgeted the Petitioner's monthly income in determining the Petitioner's monthly premium.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: No Appearance

Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. Petitioner receives a pension/retirement payment of \$145.28/month from Ametek. Petitioner's annual income from Ametek in 2011 was \$1,743.36. Petitioner has earned income from Word of Grace Community Church. In 2011, the Petitioner earned \$3,746.54 from Word of Grace.

3. The Petitioner's husband has earned income from Word of Grace Community Church. In 2011, the Petitioner's husband earned \$1,347.50 from Word of Grace. The Petitioner's husband has a seasonal job at Kohler Company. In 2011, he worked April – December and earned \$15,019.32.
4. On June 11, 2012, the agency issued a Notice of Decision to the Petitioner informing her that as of July 1, 2012, she and her husband would be eligible for BadgerCare Plus Core Plan with a monthly premium of \$125. This premium was based on the agency's calculation of monthly gross income of \$2,317.28.
5. On June 18, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The BCP "Core Plan" is a Wisconsin variant on MA for adults without dependent children, which provides basic health care coverage to adults who do not otherwise qualify for Medicaid or the BadgerCare Plus Standard or Benchmark Plans. A successful applicant must have gross income below 200% of the Federal Poverty Level (FPL). BCP Eligibility Handbook (BCPEH), §43.2; Wis. Stat. §49.45(23). The FPL amounts are available at BCPEH, §50.1, online at <http://www.emhandbooks.wi.gov/bcplus/>.

The Petitioner disputed the agency's calculation of her gross monthly income. The Petitioner's husband has seasonal income which varies significantly depending on the time of the year. The Petitioner presented W-2s and a summary of monthly income for the years 2009, 2010 and 2011. The Petitioner also presented a summary of income for January – August, 2012. The evidence demonstrates that over the years 2009 – 2011, the Petitioner's annual household income has remained fairly consistent. Based on the first 8 months of 2012, it appears that the annual household income for 2012 will also be consistent with the previous years. The issue is how to budget the Petitioner's household income based on the fact that the income varies significantly at different times of the year.

According to the BCPEH, §16.6, if the amount or frequency of regularly received income is known, average the income over the period between payments. In the Petitioner's case, the amount of income each month varies but the frequency of the income is known. Also, the annual income is consistent. Because the monthly income varies significantly during the calendar year, the only way to fairly determine average monthly income is to prorate the income over the certification period of 12 months.

In this case, the agency was unable to produce evidence to demonstrate how it arrived at gross monthly income of \$2,317.28 for the Petitioner. The agency did not dispute the Petitioner's evidence showing her actual monthly income for each month from 2009 – 2012. The Petitioner's calculations for 2009 – 2011 were supported by W-2s issued by each employer. Based on the evidence, I conclude that the best evidence of the Petitioner's gross monthly income is the annual income for 2011 divided by 12 months. The Petitioner's total household annual income for 2011 was \$21,856.72. Therefore, the gross monthly income upon which the agency should determine the Petitioner's premium is \$1,821.39.

CONCLUSIONS OF LAW

The Petitioner's gross monthly income upon which the agency should determine the Petitioner's BCP Core Plan premium is \$1,821.39.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to make a determination of the Petitioner's monthly BCP Core Plan premium effective July 1, 2012 based on a household size of two and gross monthly income of

\$1,821.39. The agency shall issue a new Notice of Decision to the Petitioner regarding the monthly premium. These 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 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).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, 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 Milwaukee,
Wisconsin, this 22nd day of October, 2012

Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: Division of Health Care Access and Accountability, DHSADHCAA@Wisconsin.gov -
DHSADHCAA@Wisconsin.gov
ecimpfairhearings@co.sheboygan.wi.us, ecimpfairhearings@co.sheboygan.wi.us - Sheboygan County



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

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

The preceding decision was sent to the following parties on October 22, 2012.

Sheboygan County Department of Human Services
Division of Health Care Access and Accountability