



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCC/143682

PRELIMINARY RECITALS

Pursuant to a petition filed September 5, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Burnett County Department of Social Services in regard to Medical Assistance, a hearing was held on October 23, 2012, at Siren, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner's income puts her and her husband over the BadgerCare Plus Core Plan limit.

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: Michelle Brown

Burnett County Department of Social Services
7410 County Road K, #280
Siren, WI 54872

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) resides in Burnett County with her husband.
2. The county agency notified the petitioner on August 28, 2012, that her and her husband's BadgerCare Plus benefits would end on September 1, 2012, because their countable income exceeded 200% of the federal poverty level.

3. Two hundred percent of the federal poverty level for a two-person household is \$2,521.66. *BadgerCare Plus Handbook*, § 50.1.
4. After adding depreciation back into income, the petitioner and her husband's total monthly income is \$5,119.96.

DISCUSSION

The BadgerCare Plus Core Plan expanded medical assistance coverage to persons between 18 and 64 years old who do not have any children under 19 years old. *BadgerCare Plus Eligibility Handbook*, § 43.2. Recipients must not currently have insurance or access to insurance provided by an employer, and their gross income cannot exceed 200% of the federal poverty level. *Id.* Income tax deductions for depreciation must be added back into income when determining medical assistance eligibility. Wis. Admin. Code, § DHS 103.07(2)(a). This means that when using the previous year's income tax return to determine income, the Department must add any deduction taken for depreciation back into income. Furthermore, applicants cannot claim any other deductions such as the earned income deduction allowed for other parts of the medical assistance program. *BadgerCare Plus Eligibility Handbook*, § 43.7.2.

Enrollment Services ended BadgerCare Plus Core Plan benefits for the petitioner and her husband after determining that their countable income exceeds 200% of the federal poverty level. For a two-person household this is \$2,521.66. The agency determined that the petitioner's gross household income is \$5,119.71 per month. This is much higher than their income had been determined to be in the past because Enrollment Services, which had previously handled the case, did not include from milk checks or add depreciation back into their self-employment income.

The Notice of Decision is seriously flawed because the components listed as making up the petitioner's gross household income do not add up to the number listed as the total gross income. The notice states that each month she receives \$1,119.26 from self-employment and her husband receives \$1,802.67 from self-employment and \$172.92 from the local township. This adds up to \$3,094.85. Yet the notice, without any further explanation, indicates the total gross household income is \$5,119.71. Although this notice is flawed, it did not affect the petitioner's preparation because she had an opportunity to discuss her case with her worker. Furthermore, even if the notice had been clear, there is nothing the petitioner could have done to change her income in response to the notice, so, although it may have been confusing, it did not prejudice her. Finally, even if only the \$3,094.85 figure were used to determine her eligibility, this amount would exceed 200% of the federal poverty level, meaning that she would still be ineligible.

The petitioner and her husband have several sources of income. Their 2011 federal tax return indicates that they each received \$12,149 in milk checks from a farm corporation, or \$1,012.42 per month. They also had a self-employment income from Dairy Products. The gross income from this venture was \$8,528 and expenses were \$13,342. However, they claimed \$13,115 in depreciation, which when added back in gave an annual countable income of \$8,201, or \$683.42 per month. Next, they each held a 20% stake in Tynaka, a partnership that had \$355,176 in gross receipts, \$415,552 in gross expenses, and \$127,537 in depreciation, leaving \$67,161 after depreciation is added back in. The 40% attributed to the petitioner and her husband is \$26,864.40, which when divided by 12 gives a monthly income of \$2,238.70. Finally, the petitioner's husband earns an average of \$172.92 from a local township. When all of this income is added together it equals \$5,119.96. This is \$.25 more than the agency determined, a difference that has no effect on the petitioner's eligibility. Based upon this, I must find that her household is ineligible for medical assistance because her household income exceeds 200% of the federal poverty level.

CONCLUSIONS OF LAW

1. Depreciation and capital equipment purchases must be added back into the petitioner's house hold income when determining whether she is eligible for the BadgerCare Plus Core Plan.
2. Enrollment Services correctly ended the petitioner's BadgerCare Plus Core Plan benefits because her countable household income exceeds 200% of the federal poverty level.

THEREFORE, it is**ORDERED**

The petitioner's appeal is dismissed.

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 served and 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 Madison,
Wisconsin, this 15th day of November, 2012

Michael D. O'Brien
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 November 15, 2012.

Burnett County Department of Social Services
Division of Health Care Access and Accountability