



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCC/143922

PRELIMINARY RECITALS

Pursuant to a petition filed September 17, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Portage County Department of Human Services in regard to Medical Assistance, a hearing was held on November 02, 2012, at Stevens Point, Wisconsin.

The issue for determination is whether the Department erred in determining eligibility for BadgerCare based on the income of the 30 days prior to the determination rather than an average monthly income based on the previous 12-month period.

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: Miriam Carrizosa
Portage County Department of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County.

2. Petitioner submitted his online renewal for the BC+ Core Plan program on August 1, 2012. The renewal was processed by the Department on August 13, 2012.
3. The Department sought verification of earnings because it identified a discrepancy between reported income and the state wage match records. Petitioner sent back the requested verification of income.
4. The verified income placed the petitioner at 238% of the federal poverty level. The Department sent notice to petitioner informing him denying eligibility for BadgerCare effective 9/1/2012.
5. Petitioner filed a timely request for hearing.

DISCUSSION

To be eligible for BC+, a person must be under age 19, a custodial parent, or the spouse of a custodial parent. Wis. Admin. Code, §DHS 103.03(1)(f)1. If income is more than 150% of poverty, the person must pay a premium for BC+ eligibility, if the household does not have access to insurance. Wis. Admin. Code, §DHS 103.085(1)(b); BC+ Handbook, Appendix 7.3.3. If income is between 133% and 150% of poverty the person is eligible for BC+ even if he has access to health insurance, if premiums for the health insurance are more than 9.5% of household income. BC+ Handbook, Appendix 7.3.3; this policy became effective July 1, 2012. If income is above 150% of poverty and the household has access to insurance, any adults in the household are ineligible for BC+, but children can be eligible if a deductible is met. Handbook, App. 17.1.

Petitioner and his wife are seasonal workers. They earn substantially more during eight months of the year than during the other four months during which time they have been historically laid off and receive unemployment. Petitioner does not dispute the income calculations completed by the Department. The only issue raised by petitioner is whether it is possible for the Department to consider annual income when determining eligibility rather than determining eligibility based on the prior thirty days as the Department has done.

The Department representative explained that eligibility was determined by the prospective budgeting method based on the previous thirty days of income which she stated is required under the BC+ program. The representative provided an exhibit following the hearing to support this argument. She submitted a copy of the *Process Help* publication which provides Department of Health Services rules and guidance for income maintenance workers.

The representative is correct that prospective budgeting is the correct process to use to determine eligibility for the program. The Department uses prospective budgeting to best predict income *over the BC+ certification period*. See *Process Help* publication at §16.4:

16.4.1 Prospective Budgeting Introduction

Prospective Budgeting is the process of estimating the household anticipated income during the certification period. At application, review or reported change in employment, the IM worker must calculate the amount of income the household will receive in the future months.

When prospectively budgeting an applicant's income, take into consideration the income already received by the household and any anticipated income the household and the agency are reasonably certain will be received during the certification period.

Use income received during the last 30 days as an indicator of the income that is and will be available to the household during the certification period unless that income does not accurately represent anticipated future earnings due to a change that has been indicated by customer.

At application or review, when budgeting income for [FS](#), use the income received in the 30 days prior to the interview date **as long as that income accurately reflects the best estimate of the income for the future months.**

When budgeting income for [BC](#) + only cases you will be use the gross monthly income verified by the previous 30 days gross **or by the best information available.**

DHS *Process Help* publication at § 16.4.1 (emphasis added). The document also provides:

Note: Remember, **do not use past income as an indicator of anticipated income when changes in income have occurred or can be anticipated during the certification period.** This includes a job ending or beginning, a change in hours or rate of pay or a change in the amount of overtime worked.

DHS *Process Help* publication at § 16.4.2 (emphasis added).

Thus, it is clear that a worker may use other information other than the previous 30 days income in her prediction of the member's income over the certification period which is one year. Indeed, the guidance provides that the worker should use the best information to make an accurate prediction. I point this out because the representative, at the time of the hearing, appeared to argue that there is a firm rule that the prospective budgeting process must be based on the previous 30 days of income multiplied by twelve. But, the policy seeks to identify the "**best estimate.**"

It is possible that the petitioner's income history, including length of time with this employer, history/pattern of consistent, annual layoffs, unearned income received during layoffs, etc. may be reliable predictors of petitioner's income during the coming year. It may be that these facts are not reliable predictors because, perhaps there is not a long-term history, or because petitioner is likely to supplement with other employment during a layoff, or some other reason. It would be entirely reasonable to decline to predict future earnings based on past history if the history only reflects one or two years of this seasonal work, or if the pattern of work is not consistent enough to be predictable. On the other hand, if petitioner has worked seasonally and can demonstrate a consistent pattern of terms of employment and wages over a long period of time, then the Department may find those facts to be good predictors of the petitioner's future income over the next year.

I conclude that the Department must, at least, consider the facts around the employment history of petitioner in determining the best estimate of income over the certification period. The Department

is not required to base such a determination only on the previous thirty days of income. If the Department finds that after gathering additional facts (which, for example, could include contact with the employer and request for petitioner's historical tax returns) that the prospective budgeting based on the higher monthly income is not an accurate predictor, then the Department has the ability to budget based on the other information. Ultimately, the Department must decide what is most reliable.

CONCLUSIONS OF LAW

The Department should use the most reliable information to accurately predict the petitioner's income during the certification period. The Department is not required to use the prior thirty days' income if that is not the most reliable and accurate predictor.

THEREFORE, it is ORDERED

This matter is remanded to the Department and its county agent with instructions that it gather necessary and appropriate facts to determine the most reliable and accurate prediction of petitioner's income during the one-year certification period. The Department shall then redetermine eligibility based on that information. New notice regarding the eligibility determination shall be sent to petitioner. These actions shall be completed within 15 days 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 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 8th day of November, 2012

John P. Tedesco
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 8, 2012.

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