



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCS/144065

PRELIMINARY RECITALS

Pursuant to a petition filed September 19, 2012, under Wis. Stat., §49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a hearing was held on October 17, 2012, by telephone.

The issue for determination is whether petitioner's school income was budgeted correctly.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner receives BadgerCare Plus (BC+) MA and Food Share. He had a review in September, 2012.
3. Petitioner's yearly income from his job at a school is \$26,190 spread over 9.5 months. In the summer, 2012, petitioner applied for Wisconsin Works (W-2); he eventually received a total of \$250 in W-2 payments covering August and September, 2012.

4. When the agency calculated petitioner's benefits, it divided his yearly school income by 9.5, which averaged \$2,756.84 per month. That income put petitioner over the 150% of poverty level for BC+. Accordingly he was given a \$99 BC+ premium for September, and his BC+ is slated to close November 1, 2012 because he has access to health insurance.

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.

The issue in this case is how petitioner's school income was budgeted. In the past his income was divided by twelve to get a monthly amount. This time it was divided by 9.5, with the reason being that petitioner supplemented his income in the summer because he applied for and received W-2. The Handbook, App. 16.4, provides with regard to contractual income:

This provision applies primarily to teachers and other school employees.

When an employed BC+ group member is paid under a contract, either written or verbal, rather than on an hourly or piecework basis, the income is prorated over the period of the contract. For example, if the contract is for 18 months, the income is prorated over 18 months no matter the number of installments made in paying the income. The income is prorated even if:

- a. There are predetermined vacation periods, or
- b. S/he will only be paid during work periods, or
- c. S/he will be paid only at the end of the work period, season, semester or school year.

It is unclear whether petitioner is a contracted employee. There is a case note from September 13 saying that he is not on a contract. However, a later case note mentions that he supplements his income, which is a Food Share policy for contracted employees. See Food Share Handbook, App. 4.3.2.1, no. 13. The Food Share Handbook provision distinguishes between someone who is paid for 9.5 months and has no other income during the off months and someone who works during the off months. In the first case the person's contractual income is divided by 12; in the second case by 9.5 (and then presumably budgeted only during those 10 months, with the supplemental income budgeted the other two months). Again, that policy is contained only in the Food Share Handbook. Under the BC+ policy, the income is to be prorated over the contract with no exception for supplementing income.

Because it was unclear whether petitioner is a contractual employee, I accessed petitioner's electronic case file. I found the three most recent income verifications from his school employer (September 18, 2012, August 15, 2011, and March 14, 2011). All three stated similarly that petitioner is a full-time food service worker who works when school is in session, and then stated his total *estimated* income for the school year. That language suggests to me that petitioner is not a contractual employee. The income for a contractual employee would not have to be estimated; it would be stated in the contract.

I conclude, therefore, that the agency determined correctly that petitioner's income should not be divided by 12 because he is not a contractual employee. Thus the agency should budget only his estimated monthly income. Since petitioner starts work in August, the income should be budgeted beginning with September benefits, which occurred in this case. 40 hours per week times \$17.23 multiplies out to \$2,756 per month, which is what the county budgeted. Since petitioner begins to have access to health insurance effective November 1, the insurance access provisions would become effective because income is over 150% of poverty. The income would not be budgeted in July and August of each year.

CONCLUSIONS OF LAW

The agency correctly budgeted petitioner's actual monthly income beginning in September because he is not a contractual employee whose income would be prorated over an entire year.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 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 22nd day of October, 2012

Brian 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 October 22, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability