



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCS/145150

PRELIMINARY RECITALS

Pursuant to a petition filed November 09, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance, a hearing was held on December 17, 2012, at Oshkosh, Wisconsin.

The issue for determination is whether respondent properly denied petitioner's application for BadgeCare Plus due to a failure to verify income information.

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: Leslie Vosters

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. On or about August 9, 2012, petitioner submitted an online ACCESS benefits application for FoodShare, Family Planning Services, and Health care.

3. On or about August 17, 2012, Respondent sent petitioner a Notice of Proof Needed requesting, among other things an Employer Verification of Earnings form. The Notice of Proof Needed specified a due date of September 10, 2012.
4. Petitioner is employed in the housekeeping department at [REDACTED] Petitioner testified that she earns approximately \$10.00 per month in tips.
5. Petitioner's Employer Verification Form was received on September 6, 2012. It was correctly completed, but there was no information on tip income received by petitioner.
6. By notice dated October 1, 2012, respondent denied petitioner's application for failure to comply with the Notice of Proof Needed.

DISCUSSION

Household composition and household earnings are questionable items that may need verification if they affect eligibility. *BadgerCare Plus Eligibility Handbook* § 9.10. The agency must provide a written verification request to the participant providing for at least a 10 day deadline to verify the requested information. *BadgerCare Plus Eligibility Handbook* § 9.3. Failure to verify within the deadline may be extended if the participant communicates to the agency that she is having difficulty verifying or the verification sought is not within her control, and requests assistance. *BadgerCare Plus Eligibility Handbook* §§ 9.11.3, 9.11.4. However, when no verification is received within the deadline, then the agency may discontinue benefits. See, also, *BadgerCare Plus Eligibility Handbook* § 9.11.4.

Petitioner testified that she was never informed that her employer had failed to provide tips income information. Indeed, the notice of denial pertaining to BadgerCare and Family Planning Services only states: "You did not provide the required proof of your answers to the agency. See the 'Notice of Proof Needed' that was sent to you for more information." That vague description does not specify, even in general terms, the missing information on the Employer Verification Form. That omission could have very easily been corrected by petitioner's employer, and considering that verification was received several days prior to the due date, it could have been done timely as well.

Respondent maintains that the Employer Verification Form was unacceptable because it lacked tip income information. However the county did not inform petitioner that it was inadequate, so she had no way of knowing that it was the tip income that was causing the problem. I cannot find that the respondent has properly denied petitioner's BadgerCare application given these facts.

CONCLUSIONS OF LAW

Respondent incorrectly denied petitioner's FS benefits based upon a lack of tip income verification.

NOW, THEREFORE, it is

ORDERED

That the matter be remanded to the respondent with instructions to determine petitioner's Medical Assistance eligibility based upon the August 9, 2012, ACCESS application, verification information already received, and petitioner's testimony regarding estimated tip income of 10.00 per month, retroactive to August 9, 2012. A new notice shall be sent to petitioner by respondent granting or denying her application and advising her of her appeal rights. The respondent shall take all actions proscribed in this Order within 10 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 2nd day of January, 2013

\sPeter McCombs
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 January 2, 2013.

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