



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCS/145852

PRELIMINARY RECITALS

Pursuant to a petition filed December 11, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a telephonic hearing was held on January 08, 2013, at Milwaukee, Wisconsin. At the request of the parties, the record was held open for two weeks for: a) Mr. [REDACTED] to submit to MES completed self-employment forms or tax returns to verify his income; and b) MES to submit a response and Mr. [REDACTED]'s pay stubs to the Division of Hearings and Appeals (DHA). MES representative, Sharon Thacker, sent a January 17, 2013 letter to DHA indicating that: a) petitioner and Mr. [REDACTED] failed to submit any SEIRFS or tax returns regarding Mr. [REDACTED]'s income during the overpayment periods in question; and b) Mr. [REDACTED] does not file tax returns because he does not want to pay child support. See also petitioner's previous decision in FOP/145851.

The issue for determination is whether Milwaukee Enrollment Services correctly discontinued the petitioner's BadgerCare benefits effective January 1, 2013, due to petitioner's failure/refusal to report or timely verify all income from [REDACTED] [REDACTED].

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: Sharon Thacker, ESS
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who resides with her boyfriend, [REDACTED] [REDACTED] and her five children. Mr. [REDACTED] is the father of three of petitioner's children.
2. The petitioner received Badger Care (BC) benefits for her household.
3. Mr. [REDACTED] was an employee/owner of the Milwaukee Company, [REDACTED] [REDACTED] during the periods relevant to this FS overpayment case. That company was registered on February 6, 2006 under the registered agent, [REDACTED] [REDACTED]. The company was administratively dissolved due to the company's delinquent payments to the State of Wisconsin and [REDACTED]. Mr. [REDACTED] received self-employment and other possible income from that business.
4. The petitioner failed to submit any income verification regarding Mr. [REDACTED] until about August, 2011. At that time, petitioner began submitting his paystubs which upon investigation appeared to be questionable and unreliable when compared to his year to date earnings statements.
5. Mr. [REDACTED] was unable to provide any evidence that he had timely filed any tax returns (including reporting his earned income) to the Internal Revenue Service (IRS).
6. Neither the petitioner nor Mr. [REDACTED] timely submitted Self Employment Income Report (SEIRFs) to Milwaukee Enrollment Services despite MES sending those blank SEIRF forms to the petitioner.
7. The petitioner significantly under-reported Mr. [REDACTED]'s earned income to MES by only reporting odd jobs or part-time work.
8. Milwaukee Enrollment Services sent a December 10 Notice of Decision to the petitioner stating that her BadgerCare Plus benefits for her household would discontinue effective January 1, 2013, due to petitioner failure to timely provide required verification.
9. During the January 8, 2013 hearing, the testimony of both petitioner and Mr. [REDACTED] was generally not credible, consistent or reliable in regard to the FS overpayment issues in this case.

DISCUSSION

BadgerCare (BC) is a medical insurance program for working families, mandated by Wis. Stat., §49.665, and implemented July 1, 1999. The statute specifies two eligibility criteria. First, **an applicant family cannot have income greater than 185% of the poverty line**. Wis. Stat., §49.665(4)(a)1. Second, the family cannot have access to employer-subsidized health care coverage. Wis. Stat., §49.665(4)(a)2 and 3. In addition, the statute allows the department to establish additional eligibility requirements. Wis. Stat., §49.665(4)(a)4. A person is eligible if s/he meets all non-financial and financial requirements. Medicaid Eligibility Handbook, § 1.1.1. (This is available online at <http://www.emhandbooks.wi.gov/meh/>).

An applicant for MA or a representative acting on the applicant's behalf is responsible for providing the agency with full, correct, and truthful information. Wis. Adm. Code §DHS 102.01(6). Income and assets must be verified. §DHS 102.03(3) (a) and (h). **MA shall be denied when the applicant is able to produce the required verification but fails to do so. §DHS 102.03(1)**. (Emphasis added). If the applicant is unable to produce the verification, the agency must assist her/him. Id. An application must be processed within 30 days of its filing date. §DHS 102.04(1); §DHS 104.01(10). If there is a delay in securing information, the agency must notify the applicant of the delay and the reason for the delay. §DHS 102.04(1).

The Department interprets those requirements in its Income Maintenance Manual, Chapter I, Part C. Asset and income verification is mandatory. IMM, I-C-9.3.0 & 9.1.0. The county shall deny benefits when all of the following are true: (1) the applicant has been given adequate notice of the verification required, (2) the verification is necessary to determine current eligibility, (3) the applicant has the power to produce the verification, (4) the time allowed to produce the verification has passed. IMM, I-C-3.3.0. The agency generally should allow **10 days for verification**, but it cannot deny an application until at least 31 days have passed since it was filed. IMM, I-C-5.1.0.

During the January 8, 2013 hearing, petitioner and [REDACTED] attempted unconvincingly, and without any reliable evidence, to deny her ongoing failure to report her accurate household income. The petitioner alleged that Mr. [REDACTED] was not residing in Wisconsin during some indefinite period, but provided no reliable evidence of such residence. The petitioner also alleged that she had provided the requested verification, but had no evidence to corroborate that she had provided accurate income verification regarding her household income during the overpayment periods. The testimony of petitioner and [REDACTED] was simply not credible.

The MES representative presented evidence that despite the income verification requests, petitioner failed or refused to provide reliable evidence in order for MES to determine her FS income eligibility during the two overpayment periods. The petitioner was also unable to refute that she under-reported Mr. [REDACTED]'s income during the overpayment periods. Mr. [REDACTED]'s excuse that he did not file tax returns violated federal law requiring him to have submitted timely tax returns to the IRS. As a result, MES based upon inaccurate information found the petitioner's household income ineligible for FS benefits during the overpayment periods.

This Administrative Law Judge (ALJ) wanted to provide every opportunity for the petitioner to provide clear, reliable documentation of Mr. [REDACTED]'s total income by holding the record open for petitioner to submit to MES such verification. As indicated in the above Preliminary Recitals, MES representative, Sharon Thacker, sent a January 17, 2013 letter to DHA indicating that: a) petitioner and Mr. [REDACTED] failed to submit any SEIRFS or tax returns regarding Mr. [REDACTED]'s income during the relevant period in question; and b) Mr. [REDACTED] does not file tax returns because he does not want to pay child support.

As petitioner refused to provide reliable income verification, MES had no choice but to discontinue the petitioner's BC benefits based upon the assumption that petitioner's household was above the BC income eligibility limit as of January 1, 2013. The hearing record is clear that petitioner by her actions has failed or refused to provide the requested verification. There is a negative inference that can be taken that if a party refuses to provide required, relevant information, it can be presumed that such evidence will have a negative impact on that party's case. The petitioner was unable to present any reliable evidence to refute MES' case that it correctly discontinued the petitioner's BC benefits. Accordingly, for the above reasons, I conclude that Milwaukee Enrollment Services correctly discontinued the petitioner's BadgerCare benefits effective January 1, 2013, due to petitioner's failure/refusal to report or timely verify all income from [REDACTED].

CONCLUSIONS OF LAW

1. The petitioner failed to timely provide required verification of Mr. [REDACTED]'s earned income, and did not establish any good cause for such failure.
2. The county agency correctly discontinued petitioner's BadgerCare (BC) Plus benefits effective January 1, 2013, due to petitioner's failure to provide to the county agency required employment/income verification needed to determine petitioner's continued BC eligibility and benefits.

THEREFORE, it is

ORDERED

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 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 1st day of March, 2013

\sGary M. Wolkstein
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 March 1, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability