



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCS/145930

PRELIMINARY RECITALS

Pursuant to a petition filed December 14, 2012, under Wis. Stat., §49.45(5)(a), to review a decision by the Milwaukee Enrollment Services to discontinue Medical Assistance (MA), a hearing was held on January 9, 2013, by telephone.

The issue for determination is whether the agency correctly closed BadgerCare Plus (BC+) MA for failure to verify income.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Alma Lezama
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 BC+ for herself and three grandchildren. In late 2012 the agency discovered that petitioner is the co-owner with her estranged husband of a number of rental properties. On November 27, 2012, the agency sent petitioner a "Notice of Proof Needed" requesting information on the rental properties including income from them. The due date was December 5, 2012.

3. On December 5 petitioner filed a copy of her 2011 1040A tax return that showed no rental income.
4. The agency did not consider the tax return to be sufficient information, and it took no further action. On December 11, 2012, the agency notified petitioner that BC+ would close for petitioner effective January 1, 2013 because she did not provide verification. BC+ for the children remained open. Benefits were continued pending this decision.

DISCUSSION

An MA recipient is required to verify information that can affect eligibility. Wis. Admin. Code, §DHS 102.03. If the household fails to verify required information by the time limit, the agency may deny the benefits. Wis. Admin. Code, §DHS 102.03(1). The agency should assist the applicant if she requests assistance. BC+ Handbook, App. 9.8. If sources of verification are unavailable, the agency should use the best information available. Id.

The Handbook, App. 9.11.4, provides as follows:

Deny or reduce benefits when all of the following are true:

1. The member has the power to produce the verification.
2. The time allowed to produce the verification has passed.
3. The member has been given adequate notice of the verification required.
4. You need the requested verification to determine current eligibility. Do not deny current eligibility because a member does not verify some past circumstance not affecting current eligibility.

In this case the county denied BC+ as required. It notified petitioner of the required verification, and it did not receive the verification by the time limit. Petitioner did not request assistance.

I agree with the agency action. Petitioner had to know that she is the co-owner of the rental properties even if her husband does all the managing and reports the income only on his taxes. To simply provide a copy of her tax return with no other explanation of her role, or lack of a role, in the rental properties amounts to telling the agency nothing. The problem for petitioner is that although the IRS might accept one spouse reporting all of the income on his Head of Household tax return, the welfare agency looks at ownership regardless of how the income is reported to the IRS.

At the hearing petitioner provided the verification, but at this point the action was already taken. Since benefits were continued pending the appeal, however, the agency should take appropriate action on the new information. If petitioner disagrees with the new action, she can file a new appeal.

CONCLUSIONS OF LAW

The agency correctly sought to close BC+ because petitioner did not verify rental income.

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 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 18th day of January, 2013

\sBrian 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 January 18, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability