



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCS/146438

PRELIMINARY RECITALS

Pursuant to a petition filed January 08, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on February 06, 2013, at Milwaukee, Wisconsin. The record was held open to allow the petitioner time to submit additional documentation; said documentation was timely received. A concurrent appeal concerning FoodShare benefits is addressed in a separate decision.

The issue for determination is whether the respondent correctly assessed an MA premium in accordance with petitioner's income.

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: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who resides in a BadgerCare Plus household of three.

2. Petitioner is an ongoing BadgerCare recipient.
3. At all times material hereto, the petitioner was employed by [REDACTED] her two adult children, [REDACTED] and [REDACTED] were employed by [REDACTED] a catering company.
4. Employer Verification of Earnings forms (EVFEs) submitted by [REDACTED] indicated that both [REDACTED] and [REDACTED] earned \$10.00 per hour, and worked an estimated 15-30 hours per week. Exhibit 3.
5. Five paystubs were submitted covering the period of October 15, 2012, through November 19, 2012, pertaining to [REDACTED]'s employment with [REDACTED]. Those paystubs indicate an hourly wage of \$9.00. Exhibit 4.
6. On November 8, 2012, the respondent notified the petitioner that due to her household earned income, the petitioner owed a BadgerCare Plus monthly premium of \$296.00 as of December 1, 2012.
7. The petitioner's household's prospectively calculated gross earned income of \$3847.24 was above the BC+ premium requirement of \$2115.80, thereby requiring the petitioner to pay a monthly BC+ premium for a family size of three. Respondent's calculation of petitioner's household income was based upon the hours and pay rate as identified in the submitted EVFEs.

DISCUSSION

BadgerCare is an expansion of the Wisconsin Medical Assistance program designed to provide coverage to children under 19 and their parents. Wis. Stats. §49.665; Wis. Admin. Code § DHS 103.03; *Medicaid Eligibility Handbook (MEH)*, § 5.7.1.1. BC+ eligibility has the non-financial requirement that the household contain a person under age 19. If so, BC+ is also available to the custodial parent of the person under 19. See, WI Admin Code § DHS 103.03(1)(f).

A household must also meet financial requirements. *MEH* § 5.7.6. All households are now required to be tested using prospective budgeting. *MEH* § 4.1.6. Prospective budgeting is the determination of one month's benefits based on the agency's best estimate of income and circumstances that will exist in that month. Reconciliation at a later date using actual income figures is no longer required to be performed by county agencies under the MA Program.

After a household qualifies for the BadgerCare program, a determination is made as to whether a premium must be paid by the household. A lower income limit of 150% of the poverty line is used as the demarcation between households that must pay a premium and those that do not pay. *MEH* § 5.7.8. In this case, the petitioner substantively refuted the respondent's determination of her monthly household income by demonstrating that the calculations were based upon incorrect information provided via an EVFE.

The petitioner argues that [REDACTED] has misreported [REDACTED]'s earnings as well as his average hours of work. Due to the employer's incorrect information, post-hearing the petitioner submitted five of [REDACTED]'s paystubs, which clearly indicate that [REDACTED] was earning \$9.00 per hour. Exhibit 4. The paystubs also reveal that petitioner's average hours worked per week is slightly over 15. Per handwritten notes on the FS budget screen, it is apparent that the respondent used an average of 22.50 weekly hours. While it does comport with the EVFE information, the hours assumption is clearly not borne out by the actual hours worked by [REDACTED]. [REDACTED]'s paystubs were not submitted, but it could certainly be argued that the 22.5 hours applied to her is incorrect as well.

Petitioner argues that, due to the nature of the catering business, [REDACTED] and [REDACTED]'s respective incomes fluctuate a great deal. [REDACTED]'s paystubs lend strong support for this argument, as they demonstrate weekly

hours varying from 9.25 to 31.89. Exhibit 4. I note that when dealing with fluctuating income, the *Medicaid Eligibility Handbook* instructs as follows:

If the amount or frequency of regularly received income is known, average the income over the period between payments. If neither the amount nor the frequency is predictable, do not average; count income only for the month in which it is received.

MEH, § 16.6.

The testimony and documentation submitted in conjunction with the hearing in the instant matter has demonstrated that the respondent relied upon erroneous information in determining petitioner's household income, and, by extension, the amount of premium required. I will remand this matter to the respondent to re-calculate petitioner's household income for BadgerCare purposes for December 1, 2012, going forward.

CONCLUSIONS OF LAW

Due to incorrect information received from an employer, and failing to account for fluctuating monthly earned income, the county agency incorrectly calculated the petitioner's counted income for BadgerCare purposes.

THEREFORE, it is

ORDERED

That this matter shall be remanded to the respondent to, within 10 days of the date of this Decision, request verification of petitioner's wages for the month of December, 2012. Upon receipt of acceptable verification, the respondent shall re-determine petitioner's BadgerCare eligibility and/or premium for December, 2012, going forward, in accordance with *Medicaid Eligibility Handbook* § 16.6.

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 19th day of March, 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 March 19, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability