



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCB/148527

PRELIMINARY RECITALS

Pursuant to a petition filed April 04, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Dodge County Department of Human Services in regard to Medical Assistance, a hearing was held on May 13, 2013, at Juneau, Wisconsin.

The issue for determination is whether Dodge County Department of Human Services (the agency) correctly denied Petitioner's request for BadgerCare+ benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Katie Sanchez, Economic Support Specialist Bilingual
Dodge County Department of Human Services
143 E. Center Street
Juneau, WI 53039-1371

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County.
2. On or about January 1, 2013, Petitioner applied for Healthcare benefits. (Exhibit 6)

3. On March 7, 2013, the agency sent Petitioner a notice of action and proof needed indicating that she needed to pay a premium and provide verification of income from Wal-mart and a house rental by March 18, 2013. (Exhibit 4)
4. On or about March 17, 2013, Petitioner submitted the requested proof. (Exhibit 8)
5. On March 19, 2013, the agency sent Petitioner a notice indicating that her application for healthcare benefits was denied because she did not provide the required proof and because her household was over program limits. (Exhibit 6)
6. On March 21, 2013, the agency sent Petitioner a second notice, again informing her that her application for healthcare benefits was denied. (Exhibit 7)
7. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 4, 2013. (Exhibit 1)
8. Petitioner receives \$353.16 per child, per month in child support for her two children, for a total of \$706.32 per month, although the oldest child is turning 18 this month, which will cause the cessation of child support for that child. (Testimony of Petitioner)
9. Petitioner works at Wal-mart and provided to the agency two, bi-weekly paystubs for pay periods ending 2/08/13 and 2/22/13 as proof of her earned income. The first pay stub shows gross income of \$831.24; the second pay stub shows gross income of \$756.30, for a total monthly income of \$1587.84. (Exhibit 8, pgs. 7-8)
10. Petitioner receives rental income in the amount of \$170.09 per month. (Exhibit 8, pg. 6)
11. Petitioner was also self-employed operating two bait shops, the Baits Motel which has been running since at least 2011 and By the Dam Bait, which came into operation in October 2012. (Testimony of Petitioner)
12. At the time of the hearing, Petitioner's accountant still had not completed her 2012 tax returns. Consequently, the agency relied upon Petitioner's 2011 schedule C for the Baits Motel to determine her self-employment income. (Testimony of Ms. Sanchez; Exhibit 8)

DISCUSSION

BadgerCare Plus (BC+) is a state/federal program that provides health coverage for Wisconsin families. *BadgerCare + Eligibility Handbook (BEH) §1.1.1*. In order for adult caretakers to be financially eligible for BadgerCare+ benefits, the household income must be below 200% the Federal Poverty Level (FPL) and all available gross income must be counted. *BEH §16.1* Effective February 1, 2013, 200% of FPL for a family of 3 is \$3255 per month. *BEH §50.1*

It is the agency's contention that Petitioner's household income exceeds 200% of the Federal Poverty Level. Petitioner disagrees.

For BadgerCare+ purposes, only actual gross monthly income is used. Estimated amounts using the 4.3 weekly pay period or 2.15 bi-weekly pay period multipliers are NOT used. *Process Help §16.4.1*; see also *Ops Memo 01-01*.

Petitioner's sources of income consist of earned income from Wal-Mart in the amount of \$1587.84, child support in the amount of \$706.32 per month, rental income in the amount of \$170.09 and self-employment income. It is the self-employment income that is in dispute.

At the hearing, the agency contended that they could only use tax forms and as such, had to rely upon Petitioner's 2011 tax documents, because her 2012 tax returns had not been completed. However, the use of tax documents is not necessarily mandatory. *BEH §16.4.3.2* gives the following direction:

16.4.3.2 Calculating BC+ Self Employment Income

Calculate BC+ income by either:

1. Using IRS tax forms [\(16.4.3.2.1\)](#) completed for the previous year, or
2. Anticipating earnings [\(16.4.3.2.4\)](#)

Emphasis added

The *BEH* Handbook further states that, “if past circumstances don’t represent present circumstances, calculate self-employment income based on anticipated earnings...Other instances when you would use anticipated earnings: 1. The business wasn’t operating at least one full month during the previous tax year 2. The business wasn’t operating six or more months at the time of the interview...The Self Employment Income Report form (SEIRF)(F-00107) simplifies reporting income and expenses when earnings must be anticipated...” *BEH* §16.5.3.2.4

Petitioner’s tax returns for the previous year, 2012, have not been completed yet. Petitioner testified that her first business the Baits Motel, experienced a change in circumstances, in that its sales were significantly less due to a drought. Under such circumstances, the agency could use SEIRFs, per *BEH* §16.5.3.2.4.

With regard to the second business, By the Dam Bait, it had not been in operation for six or more months at the time of Petitioner’s application. As such, the agency would have use SEIRFs to anticipate income for that business. (Id)

Petitioner completed SEIRFs for October 2012 through March 2013 (Exhibit 3):

For the Baits Motel:

October 2012	-\$2270.02
November 2012	-\$4609.41
December 2012	+\$1900.00
January 2013	+\$5878.70
February 2013	+\$3520.23
March 2013	-\$309.50

Total income: \$4110

$\$4110 \div 6 = \685.00 average monthly self-employment income from The Baits Motel.

For By the Dam Bait:

October 2012	-\$2580.95
November 2012	-\$717.74
December 2012	-\$759.63
January 2013	+\$119.75
February 2013	-\$93.97
March 2013	-\$917.68

Total income: -\$4950.22

There was an overall loss, so there is no countable self-employment income from the By the Dam Bait shop.

Adding all of Petitioner's monthly income we have:

\$685.00 Self-employment income from the Baits Motel
+\$1587.84 Wal-mart income
+\$706.32 Child-Support income
+170.09 Rental Income
<hr/>
\$3149.25

For a family of 3, 200% of FPL is \$3255 per month. *FSH §8.1.1*. \$3149.25 is 194% of the FPL so, Petitioner is financially eligible for BadgerCare+ benefits.

Petitioner should note that she will need to pay a premium to receive benefits because she is over the 133% FPL premium threshold and because special rules apply to self-employed individuals whose income is above 200% of the FPL before subtracting the depreciation, but below 200% of the FPL after subtracting the depreciation. *BEH §19.1*

Petitioner should also note that she will have to pay the premium for all prior months to receive coverage for those months.

This matter will be remanded to the agency for a determination of Petitioner's premium. If Petitioner disagrees with the agency's premium determination, she will need to file a NEW request for fair hearing.

Petitioner should note that if her income increases, she must report that change in income by the 10th of the month following the month in which the increase in income occurred. *BEH §27.3*

CONCLUSIONS OF LAW

The agency incorrectly denied Petitioner's application for BadgerCare+ benefits.

THEREFORE, it is

ORDERED

That the agency certify Petitioner for BadgerCare+ benefits effective January 1, 2013, if Petitioner is otherwise eligible for such benefits. The agency shall also issue a new notice of decision to Petitioner confirming eligibility and the amount of the premium due. The agency shall take all administrative steps necessary to accomplish these tasks 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 Milwaukee,
Wisconsin, this 17th day of May, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 17, 2013.

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