



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCB/148721

PRELIMINARY RECITALS

Pursuant to a petition filed April 12, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Burnett County Department of Social Services in regard to medical assistance, a hearing was held on May 23, 2013, at Siren, Wisconsin.

The issue for determination is whether the county agency correctly determined that the petitioner and her father's child, who lives with her, are ineligible for BadgerCare Plus because their household income exceeds 200% of the federal poverty level.

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: Carolyn Carroll
Burnett County Department of Social Services
Siren, Wisconsin

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Burnett County.

2. The county agency denied the petitioner's request that she and the father of her child continue to receive BadgerCare Plus, finding that her household income exceeds the program's limit of 200% of the federal poverty level.
3. The agency determined that the petitioner's monthly household income is \$4,161.10 per month. Her actual income is higher than this.
4. The petitioner lives with her child and that child's father.
5. The federal poverty level for a three-person household is \$1,627.50 per month. *BadgerCare Plus Handbook*, § 50.1.
6. The petitioner and her child's father grow cranberries. That operation filed for Chapter 11 bankruptcy protection on September 19, 2012. Under the terms of that bankruptcy, they are allowed \$4,554.46 to live off from each month. All of their business expenses, taxes, and mortgage payments are paid separately.

DISCUSSION

BadgerCare Plus provides medical assistance coverage to children under 19 and their parents or caretakers. Wis. Stat. § 49.471; *BadgerCare Plus Eligibility Handbook*, § 2.1. Unless they are pregnant, adults are ineligible if their household income exceeds 200% of the federal poverty limit. Wis. Stat. § 49.471(4)(a). The petitioner lives with her child and that child's father. Two hundred percent of the federal poverty level for a three-person household is \$3,255 per month. *BadgerCare Plus Eligibility Handbook*, § 50.1.

The determination of the petitioner's household income is confusing because the file contains individual tax returns for her and her boyfriend and a corporate return for the cranberry bog they operate. The agency contends that, based upon the 2012 returns, they earn \$4,161.10 per month. The petitioner does not challenge that this accurately reflects her 2012 income. My own review indicates that her countable household income in 2012 was probably much higher. Medical assistance rules require agencies to add any deduction taken for depreciation back into self-employment income. Wis. Stat. § 49.471(7)(a)1. The corporate return showed a \$118,407 deduction for depreciation that does not appear to be considered by the agency. I will not rule on what the petitioner's actual income is because the evidence shows that it clearly exceeds 200% of the federal poverty level, which is all that must be shown to uphold the agency's finding that the petitioner and her boyfriend are ineligible for BadgerCare Plus.

The cranberry corporation filed for bankruptcy Chapter 11 bankruptcy protection on September 19, 2012. Those proceedings granted the petitioner and her boyfriend a \$4,554.46 living allowance. She contends that her BadgerCare Plus benefits should not be based upon this allowance because it overstates her household income by not setting aside enough money to pay off her debts. I question how this can be true because the bankruptcy documents included in the file indicate that the proceedings are meant to pay off all of their debts. The petitioner does concede that other money taken in by the corporation is being set aside to pay business expenses, taxes, and mortgage payments. Because their taxes are paid separately, the allowance is equivalent to take-home, or net, income. The \$4,161.10 that the agency attributes to them is gross income, meaning that they would still have to pay their taxes from this amount and thus would have less than this to actually live off from. Thus, even though her income is limited by the bankruptcy court, she and her boyfriend actually have significantly more to live off from than the amount that the agency used to determine that their income exceeds 200% of the federal poverty level. I cannot tell from the record exactly how much income they receive each month, but it is clear that it exceeds the BadgerCare Plus limit for adults. Based upon this, I find that the agency correctly found her and her boyfriend ineligible for the program.

CONCLUSIONS OF LAW

The county agency correctly determined that the petitioner and the father of her child are ineligible for medical assistance because their household income exceeds 200% of the federal poverty level.

THEREFORE, it is

ORDERED

The petitioner's appeal is 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 . 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: , Madison, Wisconsin . 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 31st day of May, 2013

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on June 3, 2013.

Burnett County Department of Social Services
Division of Health Care Access and Accountability
EMCAPO