



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/149097

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 30, 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 scheduled for May 21, 2013. Following a request to reschedule this matter by the petitioner, a hearing was ultimately held on June 25, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether respondent correctly calculated petitioner's income.

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: Lee Yang

Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who resides in a household of six. Petitioner and his family received BadgerCare Plus (BCP) Plan benefits.

2. Petitioner's case was pended on March 26, 2013, due to respondent's determination of a wage discrepancy. Petitioner timely complied with respondent's subsequent verification request, and respondent determined that, at that time, petitioner's household income exceeded program limits.
3. On April 16, 2013, respondent notified petitioner in writing that BCP benefits for petitioner and R.S. would require payment of a premium of \$226.00 as of May 1, 2013, due to income in excess of program premium limits. On April 29, 2013, respondent provided written notice indicating that revised income verifications established eligibility for a lower BCP premium in the amount of \$161.00 as of June 1, 2013.
4. Petitioner's pay stub for the period ending April 7, 2013 indicated cash and credit card tips in the amount of \$1,215.29; the paystub for the period ending April 21, 2013, 2013 indicated cash and credit card tips in the amount of \$1,321.54. Exhibit 5.

### DISCUSSION

BadgerCare Plus allows children under 19 and their parents to receive medical assistance if their income falls within the limits found in the *BadgerCare Plus Eligibility Handbook*, § 16.1.; Wis. Stat. § 49.471. Premiums and eligibility depend upon a household's income, which includes "the total gross earned and unearned income received by all members of a family." Wis. Stat. § 49.471(1)(f). Unless they are pregnant, adults are ineligible if their household income exceeds 200% of the federal poverty level. Wis. Stat. § 49.471(4)(a). Adults must pay a premium if their countable income exceeds 133% of the federal poverty level; they must pay a premium on behalf of their children if their countable income exceeds 200% of the federal poverty level. *BadgerCare Plus Handbook*, § 19.1. For a family of six, the size of the petitioner's household, 200% of the federal poverty level is \$5,265.00. *BadgerCare Plus Eligibility Handbook*, § 50.1. Premiums are calculated on a sliding scale ranging from 3% to 9.5% of countable income, with the percentage increasing as the income rises above 133% of the federal poverty level. *BadgerCare Plus Handbook*, §§ 19.2 and 48.1.2. When the household income of a family of six exceeds \$3,501.23, the adults will be assessed a premium. *BadgerCare Plus Handbook*, § 48.1.2.

At hearing, respondent explained and documented how it had calculated the petitioner's household monthly income, including the amount that petitioner's employer reported as tip income. The petitioner did not dispute his reported household income as verified by his employer, but he contends that the respondent is counting income that he does not actually receive. Petitioner testified that he has to "tip out" a total of 15% of his biweekly tip total; i.e., he has to pay 15% of his tips earned to the bussing and bartending staff. Petitioner provided a letter from his employer affirming this contention. See, Exhibit 1. The issue, then, is whether or not the amount that petitioner has to tip out should be deducted or disregarded when determining his household income.

All available household income is counted in determining BadgerCare Plus eligibility unless some specific exception applies. *BadgerCare Plus Handbook*, 16.1, "Income." There is no exception which applies to the petitioner's or his wife's earned income, and therefore all of petitioner's household's income must be counted in determining petitioner's BadgerCare Core income eligibility. The petitioner's household income is above the BadgerCare premium income limit for a household of six pursuant to the *Medicaid Eligibility Handbook* § 48.1.2. Accordingly, I must conclude that respondent correctly assessed a premium based upon petitioner's household income.

There was no evidence provided by petitioner to show that the county erred in its calculations of petitioner's household income based on the best available evidence it had to make its determination. In fact, during the testimony at hearing, the petitioner did not establish any error; respondent noted that it had immediately updated its determination upon receipt of further information. See, Exhibit 5, Notice dated April 29, 2013. As such, I must find that the county correctly determined petitioner's household income.

Having had several years of experience in the restaurant business, and having had to tip out bussing staff and bartenders, I do empathize with petitioner's situation. However, as an Administrative Law Judge I cannot rule as to what may seem fair. I do not possess equitable powers and therefore cannot deviate from what law and policy dictate. See Oneida County v. Converse, 180 Wis.2nd 120, 125, 508 N.W.2d 416 (1993).

### **CONCLUSIONS OF LAW**

The respondent correctly determined petitioner's household income and assessed a premium based upon said determination.

**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 2nd day of August, 2013

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\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 August 2, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability