



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/149614

PRELIMINARY RECITALS

Pursuant to a petition filed May 24, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a hearing was held on June 20, 2013, at Alma, Wisconsin.

The issue for determination is whether the agency properly considered depreciation when determining the petitioner's eligibility for BadgerCare Plus.

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: Tom Miller

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Buffalo County.
2. The petitioner's countable household income exceeds 200% of the federal poverty level.

DISCUSSION

BadgerCare Plus provides medical assistance to children under 19, their parents, and pregnant women. Wis. Stat. § 49.471(1). Adults are ineligible if their income exceeds 200% of the federal poverty level unless they are pregnant. Wis. Stat. § 49.471(4)(a). When a person is self-employed, depreciation is generally added back into income. Wis. Stat. § 49.471(7)(a). However, an exception to this rule is allowed under the following circumstances found in Wis. Stat. § 49.471(7)(a)3.

If a parent's or caretaker relative's family income includes self-employment income and, without deducting depreciation, exceeds 200 percent of the poverty line, the parent or caretaker relative is eligible under sub. (4) (b) 4. if his or her family income does not exceed 200 percent of the poverty line after depreciation is deducted.

“Depreciation” is not defined in the medical assistance portion of the statutes.

The petitioner is a partner in a farm. He contends that the self-employment worksheet used by the Department to determine farm income does not accurately capture all of his depreciation because those who are part of a farm partnership must divide their depreciation into two different IRS schedules, Schedule F and Schedule K-1. As a result, he believes was not given credit for his depreciation. If he had been, he contends that his income would have been less than 200% of the federal poverty level.

I disagree. To understand this, one must look at what generally happens in a medical assistance situation involving depreciation. A self-employed person will have a certain level of net income reported on his federal income tax. If he has depreciation, this is added to that income for medical assistance purposes. Thus, a person who had net income of \$100,000 after all deductions, including \$20,000 in depreciation, would pay taxes on \$100,000 but usually will receive medical assistance benefits consistent with someone who has income of \$120,000. The petitioner’s income for IRS purposes was determined after allowing all deductions, including that for depreciation. This net income is the income that the agency used to determine his medical assistance eligibility. If the agency made any error, it was that it might not have added the depreciation back into his income. (I cannot tell if this mistake occurred.) But under no circumstances could the way the self-employment income worksheet is set up cause him to lose a deduction for depreciation. This is because depreciation never results in an additional expense that has not already been deducted from income for IRS purposes to be deducted for medical assistance purposes. This means that a person’s countable income cannot be lower for medical assistance purposes than it is for IRS purposes. This in turn means that the county agency did not overstate the petitioner’s income. Because he concedes that the income counted by the county agency exceeds 200% of the federal poverty level, he is ineligible for medical assistance.

CONCLUSIONS OF LAW

The petitioner is ineligible for BadgerCare Plus because his 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 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 16th day of July, 2013

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



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
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 July 16, 2013.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability