



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/149779

PRELIMINARY RECITALS

Pursuant to a petition filed June 04, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the St. Croix County Department of Human Services in regard to Medical Assistance, a hearing was held on July 23, 2013, at New Richmond, Wisconsin.

The issue for determination is whether the county agency correctly determined that the petitioner's income exceeds the BadgerCare Plus limit.

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: Cheryl Odle

St. Croix County Department of Human Services
1445 N. Fourth Street
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of St. Croix County.
2. The petitioner is a self-employed artist. In 2012, his gross receipts were \$144,721 and his expenses were \$86,669, including \$1,166 in depreciation.
3. There are four persons in the petitioner's household.

4. For a four-person family, 200% of the federal poverty level is \$3,925 per month. *Medicaid Eligibility Handbook*, § 50.1.
5. The county agency determined that the petitioner is no longer eligible for BadgerCare Plus because his income exceeds the program's limit.

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). For self-employed persons, 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.

Premiums are then determined after adding depreciation back into income. *Medicaid Eligibility Handbook*, § 48.1.3.

The county agency ended the petitioner's BadgerCare Plus benefits because his household income exceeds 200% of the federal poverty level. He is a self-employed artist who, based upon his 2012 federal tax return, earns \$4,434.83 a month if depreciation is deducted from his income and \$4,837.66 a month if depreciation is added back into income. For four-person household, the size of his, the first figure is 251.46% of the federal poverty level with the depreciation deduction and 246.59% without it. He concedes these figures are correct but contends he should be eligible anyway because the Department's website indicates that persons whose income is between 200% and 300% of the federal poverty level are covered if they pay a premium. See <http://www.dhs.wisconsin.gov/forwardhealth/EandB/eandb46b.htm>. While I understand the petitioner's confusion, that online publication also states the following:

Self-employed parents and caretakers — If your family income is at or below 200% of the FPL without deducting depreciation, you will be enrolled in the Standard Plan.

If your income is at or below 200% only by deducting depreciation expense, you will be enrolled in the Benchmark Plan.

Taken as a whole, this document accurately states the law, which is that only those whose net income is below 200% of the federal poverty level are eligible, but those whose income rises from below 200% of this level to above 200% of it after adding depreciation back into income will have to pay the premium set for those in this income group. As already noted, the petitioner does not fall into this income group.

I note that even if the website were inaccurate, the agency and I would still have to apply the actual law and find the petitioner ineligible.

CONCLUSIONS OF LAW

The petitioner is ineligible for BadgerCare Plus because his income exceeds 200% of the federal poverty level regardless of whether depreciation is deducted from that income.

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 21st day of August, 2013

\sMichael D. O'Brien
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 21, 2013.

St. Croix County Department of Human Services
Division of Health Care Access and Accountability