



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/149952

PRELIMINARY RECITALS

Pursuant to a petition filed June 10, 2013, under Wis. Stat., §49.45(5)(a), to review a decision by the Waupaca County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on July 25, 2013, by telephone. The record was held open for petitioner to provide additional income information; the information was received on July 25.

The issue for determination is whether the county correctly determined petitioner's income at his review.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Janece Swenson
Waupaca County Dept. of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waupaca County.
2. Petitioner has been eligible for BadgerCare Plus (BC+) MA for a three-person fiscal unit. Until his recent renewal he had no premium.
3. Previously petitioner's income was determined using an employer verification form that showed bi-weekly income to be \$1,125. However, when processing the renewal the worker noted that the

state wage match showed a much higher quarterly income for the first quarter, 2013. The worker then obtained petitioner's two most recent pay stubs.

4. Based upon the pay stubs bi-weekly income was determined to be \$1,544. By a notice dated May 31, 2013, the county informed petitioner that he would have a \$167 BC+ premium beginning June 1, 2013.
5. Later in June the worker discovered an error in her calculations that resulted in petitioner's income being budgeted too low. On June 20, 2013 the county sent petitioner a notice informing petitioner that BC+ would end August 1, 2013 because income was over the limit. Petitioner's gross income on that notice was \$3,360.
6. Petitioner's year-to-date income averages out to \$1,475.40 bi-weekly.

DISCUSSION

Under BC+ rules the income limit for caretaker parents is 200% of the poverty level. BC+ Handbook, Appendix 16.1. That amount for a three-person household is \$3,255. Handbook, App. 50.1. There is no limit for a child, but if household income is over 200% children are eligible for the BC+ Benchmark Plan with a premium. Handbook, App. 1.1.1.

County workers are told to use the last 30 days' income. However, if income fluctuates the county can utilize an average over a period of time.

As noted, the worker initially budgeted petitioner's income as \$1,544 bi-weekly. The result then was a BC+ premium. Petitioner contested the amount, noting that the pay stubs used were due to an unusual increase in work during that month. I asked for more recent pay stubs and received stubs through July 19, 2013.

It is true that the most recent pay stubs show a smaller income, somewhat under \$1,300 bi-weekly. However, the year-to-date amount on the most recent pay stub is \$22,131. That amount divided by the number of pay periods in 2013 (15) shows that the average bi-weekly pay in 2013 is \$1,475.40. If I use the last pay stub that the worker used (5/10/13) the average bi-weekly pay is \$1,518.80, just slightly higher than the average based upon the July 19 pay stub.

It is evident to me that petitioner's income fluctuates and that therefore the two pay stubs utilized by the county led to an inflated monthly income. I know now that the best estimate of petitioner's income is \$1,475.40 bi-weekly (still higher than his current pay amounts but the best estimate of his regular income). I thus will order the county to recalculate petitioner's BC+ eligibility retroactive to June 1, 2013. The recalculation should result in a slightly lower premium for June and July, and will result in continued eligibility for August with the same premium as in June and July.

If petitioner's pay continues to under \$1,300 bi-weekly and it appears unlikely that there will be an increase, petitioner can report the change, but it should be conclusive that the pay amounts will continue to be at the lower levels.

CONCLUSIONS OF LAW

Because petitioner's income fluctuates the best estimate of his income is the year-to-date gross income on his most recent pay stub.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to re-determine petitioner's BC+ eligibility retroactive to June 1, 2013 using \$1,475.40 as his bi-weekly employment income. The county shall take the action and inform petitioner of the result 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 Madison,
Wisconsin, this 29th day of July, 2013

\sBrian C. Schneider
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 July 29, 2013.

Waupaca County Department of Social Services
Division of Health Care Access and Accountability