



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCB/150430

PRELIMINARY RECITALS

Pursuant to a petition filed June 28, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Fond Du Lac County Department of Social Services in regard to Medical Assistance, a hearing was held on July 29, 2013, at Fond Du Lac, Wisconsin.

The issue for determination is whether the respondent properly included petitioner's parents in calculating household income pertaining to BC+ benefits for petitioner's daughter.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Deb Bohlman

Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Fond Du Lac County, and at all times material hereto, petitioner resided with her parents.
2. Petitioner turned 18 years old on May 22, 2013. On that same date, petitioner filed a BadgerCare Plus (BC+) application seeking benefits for her daughter.

3. Respondent determined that petitioner's test group included petitioner, her parents, and petitioner's daughter.
4. Respondnet found total gross monthly wages for the test group to equal \$7,601.76, which exceeds 300% of the federal poverty level for a group of four.

### DISCUSSION

To be eligible for BC+, a person must be under age 19, a custodial parent, or the spouse of a custodial parent. Wis. Adm. Code, §DHS 103.03(1)(f)1. There is no income limit for a child to be eligible, but if household income is over 200% children are eligible for the BC+ with a premium. *BEH* § 19.1.

The Department's BC+ policy states as follows:

A parent residing with his or her child under the age of 19 must be in the same BC+ Test Group. This is true even when the legal custody of the child has been transferred to someone living outside of the home. The only exception is when someone's parental rights have been legally terminated.

When a child moves from the home of a parent or caretaker relative who was eligible for BC+ to the home of another caretaker relative or caretaker relative who applies for BC+ in the same month, the new caretaker relative can be eligible as of the application date. The child, however, isn't eligible in the new household until the 1st of the month after the move.

**Note:** A child under age 19 residing with a parent may not apply separately from his or her parent. In addition, the parent must apply as the primary person for the case, unless the child filing the application is age 18.

*BEH* § 2.2.1.(Italics added for emphasis.)

First, petitioner was 18 years old when she filed the application. She is allowed to be the primary person for the case. However, since she is also under age 19 and living with her parents, her parents must be included in the BC+ Test Group. Under BC+ anyone in the home who meets the criteria of being in the BC+ test group is always included in the group whether or not he or she requested BC+. *BEH*, § 2.2.

In order to determine financial eligibility for BadgerCare+ the respondent must first determine who is in the BadgerCare+ test group. A parent living with their child under age 19 must be included in the same BC+ test group. *BEH* § 2.2.1. Petitioner's 18-year-old daughter lives in Petitioner's home and must, therefore, be include in the BadgerCare+ test group. Further, the earned income of all household test group members over age 18 must be counted for the purpose of determining eligibility and premiums. *BEH*, §16.4.

Petitioner did not raise an issue as to the household income calculated by the respondent. Instead, she wrote:

Why do we have to pay \$97.53 a month for my daughter for BadgerCare? I have no job so not way to pay. BadgerCare wants my parents to pay the \$97.53 every month. My daughter is not my parent's responsibility.

Exhibit 1. Petitioner's argument misstates the situation. Because petitioner is 18 years old and lives at home, her parents' income(s) are included in the determination of petitioner's household income for eligibility purposes. Based on that income, the respondent determined that benefits for petitioner's

daughter will require payment of a monthly premium. Her parents are not required to pay a premium for petitioner's daughter. That is petitioner's responsibility.

Based upon the foregoing and the record in this matter, I find that the respondent properly included petitioner's parents' income in determining BC+ eligibility. I note to petitioner that I have no equitable powers that would allow me to consider the fairness of the situation and must apply the law as it is written. Therefore, I must find that the respondent correctly determined the petitioner's household income. If the petitioner disagrees with this decision she may appeal it to a circuit court, which does have equitable powers, or consult with her political representative(s).

### **CONCLUSIONS OF LAW**

The county correctly budgeted the income of petitioner's parents in determining petitioner's daughter's eligibility for BC+ benefits.

**THEREFORE, it is ORDERED**

That 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 18th day of September, 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 September 18, 2013.

Fond Du Lac County Department of Social Services  
Division of Health Care Access and Accountability