



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCB/150775

PRELIMINARY RECITALS

Pursuant to a petition filed July 19, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Ozaukee County Department of Social Services in regard to Medical Assistance, a hearing was held on August 20, 2013, at Port Washington, Wisconsin.

The issue for determination is whether the agency properly denied BC+ to Petitioner and her husband effective August 1, 2013.

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: Pahoua Vang

Ozaukee County Department of Social Services
121 W. Main Street
PO Box 994
Port Washington, WI 53074-0994

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Ozaukee County. Petitioner's household consists of herself, her husband, an 18 year old son and two minor children ages 13 and 10.

2. On September 21, 2012, the agency issued a Notice of Decision informing the Petitioner that she and her husband were eligible for BC+ with a monthly premium of \$141 effective September 1, 2012. In making its determination, the agency incorrectly calculated the Petitioner's husband's income by failing to include his bonuses and other earnings. The agency also incorrectly calculated the Petitioner's earnings due to an error in calculating the hours/week worked. In addition, the agency did not include child support for one of Petitioner's children.
3. On April 17, 2013, the agency issued a Notice of Proof Needed requesting verification of Petitioner's and her husband's earnings due to an alert of a discrepancy in wages. The due date was April 26, 2013.
4. On April 25, 2013, the agency received pay statements and employer verifications for the Petitioner and her husband from [REDACTED], from [REDACTED]/MCFI and from [REDACTED].
5. On April 29, 2013, the agency issued a Notice of Decision to the Petitioner informing her that Petitioner and her husband were not eligible for BC+ effective June 1, 2013 due to being over the program income limit. In addition, the notice informed the Petitioner that the 10 year old child was eligible with a monthly premium of \$55 effective June 1, 2013. In making its determination, the agency incorrectly calculated the Petitioner's husband's income from [REDACTED] and the Petitioner's income from [REDACTED].
6. On May 10, 2013, the Petitioner contacted the agency to report that her husband no longer worked for [REDACTED]/MCFI. The agency issued a Notice of Proof Needed to verify his employment status. On May 20, 2013, the agency received pay statements for Petitioner's husband from [REDACTED] and verifications of employment for Petitioner and her husband from [REDACTED]. On May 21, 2013, the agency updated the Petitioner's wages with [REDACTED] Industries using pay statements dated February 28, 2013.
7. On May 22, 2013, the agency issued a Notice of Decision informing the Petitioner that she and her husband are not eligible for BC+ effective June 1, 2013 due to being over the program income limit. In addition, the notice informed the Petitioner that the 13 year old and 10 year old are eligible with a monthly premium of \$30 effective June 1, 2013.
8. On June 27, 2013, the Petitioner contacted the agency and reported she had not worked for [REDACTED] Industries for months.
9. On June 28, 2013, the agency issued a Notice of Decision to the Petitioner informing her that she and her husband are not eligible for BC+ due to being over the program limit. It also informed the Petitioner that the 13 year old and 10 year old are eligible with a monthly premium of \$20 effective June 1, 2013.
10. On July 3, 2013, the agency received pay statements for Petitioner's husband and for Petitioner.
11. On July 5, 2013, the agency issued a Notice of Decision informing the Petitioner that she and her husband are eligible for BC+ due to being over the program income limit. The notice also informed Petitioner that the 10 year old was eligible for BC+ without a premium for the period of June 1 – 30, 2013 but that effective August 1, 2013, a premium of \$55/month was required. In addition, the notice informed the Petitioner that the 13 year old was eligible for MA effective June 1, 2013 with no premium.
12. The household receives \$22.09/month in child support payments for one child.
13. On July 19, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Under BC+ rules the income limit for caretaker parents is 200% of the federal poverty level (FPL). BC+ Handbook, § 16.1. That amount for a four person household is \$3,925. Handbook, § 50.1. There is no limit for a child, but if household income is over 200% FPL, children are eligible for the BC+ with a premium. Handbook, §1.1.1.

Individuals who were eligible for BC+ but become ineligible due to increased income may be eligible for a 12 month BC+ extension. In order to be eligible for an extension, the individual's income must have been at or below 100% FPL at the time the income increased to over 100% FPL. Handbook § 18.1.

In this case, the agency concedes a history of errors in calculating household income back to September, 2012. I have jurisdiction only over matters for which the Petitioner's appeal is timely. In this case, the Petitioner appealed on July 19, 2013 and therefore I have jurisdiction only over the agency determinations made on June 28, 2013 and July 5, 2013. In both determinations, the agency found household income exceeds 200% FPL and therefore Petitioner and her husband are not eligible for BC+. Because the agency previously determined the Petitioner and her husband were not eligible and closed the case for Petitioner and her husband effective June 1, 2013, these new determinations correcting the calculations of household income had the effect of continuing the denial.

There is no question that previous agency errors and the notices issued by the agency made the status of the Petitioner's benefits less than clear. The agency representative presented a worksheet of her calculations in preparation for the hearing to demonstrate how the agency finally determined the household income upon which it bases its finding of non-eligibility for the Petitioner and her husband. The agency also produced the pay statements and employer verifications upon which the agency calculations are based. I reviewed the pay statements, employer verifications and worksheet in detail. For its determinations on June 28, 2013 and July 5, 2013, the agency used pay statements and verifications for June, 2013. The agency correctly calculated the average monthly income of the Petitioner's husband as \$3,515.48 based on the previous 30 days of pay. The agency correctly calculated the average monthly income of the Petitioner as \$1,941.24 based on the previous 30 days of pay. In addition, the child support received for one child is \$22.09/month. The average monthly gross income for the household was correctly determined to be \$5,478.81. This exceeds the income limit of \$3,925. Although I do not have jurisdiction over the determinations in April and May, 2013, I reviewed the agency's corrected calculations and note that the agency appears to have accurately calculated monthly gross income of \$5,748.17 for April and \$4,745.01 for May. In each month, the Petitioner's household income exceeded the gross income limit of \$3,925.

The agency also corrected concluded that the Petitioner and her husband were not eligible for an extension because their income exceeded 100% FPL for a household of four (\$1,962.50).

The Petitioner questioned the changes in the premium for the 10 year old child in her household. She noted that it has changed frequently and she questioned why this had happened.

The monthly premium for children in households with gross monthly incomes that are 270-280% FPL is \$55. Handbook § 48.1.1. The household income of \$5,478.81 for the Petitioner is in that range. The changes to premiums resulted from the various calculations and changes in household income. The agency correctly calculated the premium for Petitioner's child at \$55/month effective August 1, 2013 based on a proper calculation of household income. I further note that the Petitioner's 13 year old child was found eligible for MA without a premium and is currently covered under MA.

CONCLUSIONS OF LAW

The Petitioner's income during the period of April – June, 2013 exceeded 200% FPL. The agency properly determined that Petitioner and her husband are not eligible for BC+ due to income exceeding the income limit effective June 1, 2013. The agency properly determined the monthly premium for Petitioner's son is \$55/month effective August 1, 2013.

THEREFORE, it is

ORDERED

That the petition be, and hereby 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 Milwaukee,
Wisconsin, this 2nd day of October, 2013

\sDebra Bursinger
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 October 2, 2013.

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