



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/150962

PRELIMINARY RECITALS

Pursuant to a petition filed July 25, 2013, under Wis. Stat., §49.45(5)(a), to review a decision by the Northern IM Consortium in regard to Medical Assistance (MA), a hearing was held on September 17, 2013, by telephone.

The issue for determination is whether an exception can be made to the requirement that depreciation be added back into a self-employment income calculation.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Beulah Garcia
Northern IM Consortium
10610 Main Street
Hayward, WI 54843

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Wood County. She and her husband have three minor children.
2. Petitioner has received BadgerCare Plus (BC+) MA for several years. She and her husband operate a family farm that was incorporated January 1, 2011. Most recently self-employment income was calculated using petitioner's self-employment income reports in which she reported actual payments from the corporate entity to her and her husband.

3. An annual eligibility review was done for the household in June, 2013. The worker obtained the farm's Form 1120 Corporation Income Tax Return. The return showed taxable net income of \$1,212 along with \$88,366 in a depreciation deduction.
4. The worker added the depreciation to the net income, divided by twelve, and determined monthly income to be \$7,449.67. By a notice dated July 19, 2013, the agency informed petitioner that she and her husband would have to pay a \$728 monthly premium to continue to be eligible for BC+, effective August 1, 2013.

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 \$4,595. 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. In addition, caretaker parents who are self-employed also can be eligible for the Benchmark Plan if income is over 200% of poverty. Id.

State MA law requires the agency to add depreciation back in when determining farm and self-employment income. See Wis. Admin. Code, §DHS 103.07(2)(a). The agency should take net yearly earnings, add back in depreciation, and then divide by twelve. See also the self-employment worksheets found in the BC+ Handbook, App. 16.4.3.2.2; the Form 1120 Corporation return is one of the returns for which self-employment income is determined. To be eligible for the Benchmark Plan the self-employed parents' income must drop below 200% if poverty if depreciation is excluded from the budget. Handbook, App. 19.2.

In petitioner's case the family stayed in the BC+ regular plan because of an extension. However, they still were required to pay a premium for the adults. See Handbook, App. 19.2.

Petitioner questions whether the agency can add depreciation back in when the business is a corporation. The administrative code requires the add-back for any farm regardless of its business entity. The Division of Hearings and Appeals does not have authority to contradict or make an exception to that law, and thus I must conclude that the agency acted correctly when it used the income tax return to determine household income beginning August, 2012.

CONCLUSIONS OF LAW

The agency correctly determined petitioner's household income by adding back depreciation to the net income on her farm's 2012 tax return.

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 20th day of September, 2013

\sBrian C. Schneider
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 September 20, 2013.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability