



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/151393

PRELIMINARY RECITALS

Pursuant to a petition filed August 14, 2013, under Wis. Stat., §49.45(5)(a), to review a decision by the Outagamie County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on September 19, 2013, by telephone.

The issue for determination is whether the Division of Hearings and Appeals has authority to order a person back into the BadgerCare Plus (BC+) standard plan after she was switched to the Benchmark Plan.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Michelle Vang
Outagamie County Dept. of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. Until the agency actions in this case petitioner received BC+ MA under the standard plan for a four-person household. The family's primary source of business is a lawn care self-employment enterprise operated by petitioner's husband.
3. At a yearly BC+ review petitioner presented the business's 2012 income tax return. Using yearly net income and adding back in depreciation, the county determined that monthly income was

\$3,093.25, and that total household earned income was \$3,593.25. Initially after the income was entered there was no change to the BC+ status.

4. Petitioner's son [REDACTED] turned age 19 in June, 2013. As a result the BC+ household size was reduced to three. With the reduced household size income rose above 200% of the poverty limit.
5. By a notice dated May 23, 2013, the county informed petitioner that as of July 1 [REDACTED] no longer was eligible for BC+, and the remaining three household members were shifted to the BC+ Benchmark Plan with a monthly \$179 premium.
6. Petitioner filed this appeal asking that [REDACTED] be added back to BC+, and that she be restored to the Standard Plan because the Benchmark Plan does not cover medications necessary to her due to health issues.

DISCUSSION

To be eligible for BC+, a person must be under age 19, a custodial parent, or the spouse of a custodial parent. Wis. Admin. Code, §DHS 103.03(1)(f)1.

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. 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 self-employment income. See Wis. Admin. Code, §DHS 103.07(2)(a). The reason is that depreciation is not an actual out-of-pocket expense to a business; it is a "paper" deduction allowed for tax purposes. Out-of-pocket expenses such as loan interest payments on the depreciated equipment are shown on other lines of the tax return. 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. 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 after [REDACTED] was removed from the household income rose to 220% of poverty. After depreciation was removed income was 182% of poverty. Thus they fall squarely into the situation described above – total income over 200% but income after the depreciation exclusion below 200%. The rules put the household in the Benchmark Plan.

Petitioner requests the Division of Hearings and Appeals to do two things. First she asks that [REDACTED] be added back to the household because he still lives there and is going to school. This office does not have such authority. State law ends BC+ eligibility at age 19 with no exceptions. State law also requires a 19-year-old to be removed from a BC+ fiscal test unit for the rest of the family. See Wis. Admin. Code, §DHS 101.03(65); Handbook, App. 2.4.

Secondly petitioner asks that she be put back into the Standard Plan because of health issues; certain medications she requires are not covered by the Benchmark Plan. Again, the Division of Hearings and Appeals does not have that authority. I have searched the law and the Department policy, and I can find no authority giving the agency or the Division of Hearings and Appeals the power to order someone into the Standard Plan when the household qualifies only for the Benchmark Plan. The difference between Standard and Benchmark is totally financial; there is no health factor in determining which program a person falls under.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals does not have authority to place petitioner's 19-year-old son back into the BC+ household, and there is no authority allowing the Division of Hearings and Appeals to order a person into the BC+ Standard Plan when the household qualifies only for the Benchmark Plan.

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 23rd day of September, 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 September 23, 2013.

Outagamie County Department of Human Services
Division of Health Care Access and Accountability