FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

BCS/152195

PRELIMINARY RECITALS

Pursuant to a petition filed September 17, 2013, under Wis. Stat., §49.45(5)(a), to review a decision by the Waupaca County Dept. of Social Services to deny Medical Assistance (MA), a hearing was held on October 23, 2013, by telephone.

The issue for determination is whether child support payments should be counted in petitioner's BC+ calculation when the child is part of petitioner's household.

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Susan Ziegeweid
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 applied for BC+ in August, 2013. He has one son. Petitioner and the mother share physical placement, but petitioner pays child support to the mother. He pays $320 per month child support, with $112 of that being current and $208 being arrearages.
3. In determining petitioner's financial eligibility, the county utilized his gross income, but gave him a deduction for the $112 current child support. The full $320 support was attributed to

petitioner's son and thus included in petitioner's household income. The result put petitioner's household over 200% of the poverty limit.

4. By a notice dated August 19, 2013, the agency informed petitioner that BC+ Benchmark MA was open for his son with a $10 monthly premium effective September 1, 2013, but denied for petitioner because income is over the limit.

DISCUSSION

Under BC+ rules the income limit for caretaker parents is 200% of the poverty level. BC+ Handbook, Appendix 16.1. 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.

The issue in this case involves child support paid by a parent on behalf of a child who also is in his BC+ household. Obviously, usually when child support is paid it goes to a child who does not live primarily with the support payor, and who is not in the payor's household for benefit purposes. This is a relatively rare instance where the parents share placement of the child but the only parent who applies for benefits is the one who also is paying support.

The state computer system automatically attributes child support payments to the child. With petitioner's son being the recipient of the child support, the child support payments paid by petitioner also are counted as income to his son in petitioner's household. The result is that the income is counted twice – first on petitioner's gross income, then as the child's support income. This result is particularly true regarding the arrearage. At least the current support payment is deducted from petitioner's income, but the arrearage is not. See Handbook, App. 16.3. Thus the $208 arrearage payment is counted first in petitioner's gross income, and then again in petitioner's son's income. While the current child support amount is deducted from petitioner's income, it nevertheless returns to petitioner's income calculation as petitioner's son's income even though the money actually goes to the child's mother.

I conclude that in the situation where a parent pays child support to an absent parent on behalf of the child, but the child is part of the payor's BC+ household, the support should not be counted as the child's income to avoid the double counting of the income. The result will mean that the worker will have to manually remove the child's income from the case by marking it is unavailable. I note that this result will only be effective until the end of this year; beginning January 1, 2014 child support income and deductions will be removed completely from the benefit calculations.

CONCLUSIONS OF LAW

Because petitioner's son is included in petitioner's BC+ case, child support petitioner pays to the boy's mother should not be counted as income attributable to the child on petitioner's BC+ calculation.

THEREFORE, it is **ORDERED**

That the matter be remanded to the agency with instructions to change the child support income attributed to petitioner's son to being unavailable. The agency then shall re-determine petitioner's BC+ eligibility retroactive to his August, 2013 application. The agency shall do so 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 25th day of October, 2013

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\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 October 25, 2013.

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