



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/152797

PRELIMINARY RECITALS

Pursuant to a petition filed October 12, 2013, under Wis. Stat., §49.45(5)(a), to review a decision by the Sauk County Dept. of Human Services to discontinue Medical Assistance (MA), a hearing was held on December 17, 2013, by telephone.

The issue for determination is whether the county determined petitioner's self-employment income correctly.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jatinder Singh
Sauk County Dept. of Human Services
P.O. Box 29
Baraboo, WI 53913

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sauk County.
2. Petitioner and her husband are both employed, and petitioner also operates a self-employment photography business. In August, 2013, the county did an annual renewal for the household's BadgerCare Plus (BC+) MA. The county obtained petitioner's 2012 self-employment Schedule C tax return.

3. The county obtained self-employment income by subtracting expenses from gross business receipts. It determined yearly self-employment income to be \$32,233.40 and divided that by twelve to get monthly income of \$2,686.11.
4. By a notice dated September 4, 2013 the county informed petitioner that the adults were ineligible for BC+ but the children were eligible with a \$110 premium.
5. After petitioner filed this appeal the worker corrected self-employment income. The county had subtracted business expenses from Line 1 gross business receipts instead of Line 7 gross income. The worker then re-determined self-employment income to be Line 7 minus Line 28, which is the same as Line 29 of the Schedule C.
6. The business's net income from line 29 was divided by twelve to obtain monthly income of \$1,842. When that income was added to other employment income, the adults still were determined to be ineligible for BC+ and the children were eligible with a \$20 premium. The change was entered effective December 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 four-person household is \$3,675. 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. 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 there was no depreciation.

There was some confusion over what number was used from the Schedule C. Initially it was entered incorrectly as being Line 1 minus Line 28. Then after the hearing was filed the worker noted an error and subtracted Line 28 from Line 7. The worker made the correction for December 1, so it appears that petitioner was charged the higher, incorrect premium of \$110 for September through November, and then reduced the premium to \$20 for December.

As it turns out, the county worker erred in both instances. Petitioner also has a Line 30 expense deduction on her Schedule C. When the worker calculated self-employment income he deducted only the expenses at line 28. However, Department policy is clear on how self-employment income is determined.

The Handbook, App. 16.4.3.2.2 refers workers to worksheets to determine self-employment income using Schedule C and other self-employment tax forms. The worksheet for a sole proprietorship, like petitioner's business, is number F-16037. That worksheet for determining self-employment income tells the worker to take net profit or loss from Line 31, add back in depreciation (line 12), depletion (line 13), amortization and risk loss (both from line 27), and then the result is self-employment income for BC+ purposes. Thus in this case petitioner's self-employment income is the Line 31 amount of \$12,708.80 since there are no Schedule C deductions on Lines 12, 13, or 27. Monthly self-employment income thus is \$1,059.07.

I will remand the case to the county with instructions to re-determine petitioner's household BC+ eligibility back to September 1, 2013 using the correct amount of self-employment income.

CONCLUSIONS OF LAW

The county incorrectly determined petitioner's self-employment income at her latest BC+ review.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to re-determine petitioner's BC+ eligibility retroactive to September 1, 2013 using \$1,059.07 as petitioner's monthly self-employment income. The county shall take the action, and notify petitioner of the result, 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, Room 651, 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 December, 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 December 18, 2013.

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