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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/155823

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 28, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Dodge County Department of Human Services in regard to Medical Assistance, a hearing was held on April 07, 2014, at Juneau, Wisconsin.

The issue for determination is whether the Department erred in its termination of BC+ for petitioner and her husband effective April 1, 2014.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Erin Falcon

Dodge County Department of Human Services  
143 E. Center Street  
Juneau, WI 53039-1371

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County.
2. Petitioner was a recipient of BC+ benefits for her 4-person household including herself and her husband.
3. Petitioner underwent a periodic eligibility review in February 2014.

4. Petitioner's husband is sole owner/employee of a corporation.
5. The agency calculated petitioner's BC+ eligibility based on the use of the Self-Employment Income Worksheet-Corporation (see ex. #1). The agency used the petitioner's 2012 tax return as the basis for this calculation.
6. Petitioner's monthly household income including the business depreciation is 2,922.08.
7. The depreciation amounts to \$660.83 per month.
8. Following the review, the agency terminated petitioner's FS effective April 1, 2014.
9. Petitioner appealed.

### **DISCUSSION**

BadgerCare Plus is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. The program's nonfinancial eligibility standards were broadened effective April 1, 2014, to include adults who do not have minor children in their home. Wis. Stat. § 49.45(23); 2013 Wisconsin Act 116, § 29, for effective date; *BadgerCare Plus Eligibility Handbook (BCPEH)*, § 2.1, at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (viewed in March 2014). The petitioner meets the nonfinancial eligibility tests for the program.

The petitioner must also pass an income test. An eligible applicant cannot have adjusted gross income exceeding 100% of the federal poverty level (FPL). Wis. Stat. § 49.45(23)(a); *BCPEH*, § 16.1. The 100% FPL amount is \$1,987.50 for a household of 4 persons in 2014. *Id.*, § 50.1. This is a change from the previous rules that enrolled parents with incomes at a higher level.

First, petitioner questioned the application of self-employment income rules. The petitioner's husband is "self-employed" for purposes of public benefits. He is the sole owner and employee of a corporation/business. The argument that he is anything other than self-employed is contrary to the rules. As the BC+ Eligibility Handbook explains in Section 16.4:

Self-employment income is income derived directly from one's own business rather than as an employee with a specified salary or wages from an employer. "Business" means an occupation, work, or trade in which a person is engaged as a means of livelihood.

\* \* \*

Self Employment is identified according to the following criteria.

#### **Organization**

A farm or other business is organized in 1 of 3 ways:

1. A sole proprietorship, which is an unincorporated business owned by one person.
2. A partnership, which exists when 2 or more persons associate to conduct business. Each person contributes money, property, labor, or skills, and expects to share in the profits and losses. Partnerships are unincorporated.
3. A corporation is a legal entity authorized by a state to operate under the rules of the entity's charter. There may be one or more owners. A corporation differs from the other forms because a corporation:
  - a. Is taxed as a separate entity rather than the owners being taxed as individuals, and

- b. Provides only limited liability. Each owner's loss is limited to their investment in the corporation while the owners of unincorporated business are also personally liable.

### **IRS Tax Forms**

A self-employed person who earns more than \$400 net income must file an end-of-year return. A person who will owe more than \$400 in taxes at the end of the year must file quarterly estimates.

IRS tax forms for reporting self-employment income are listed below.

1. Form 1065 - Partnership
2. Form 1120 - Corporation
3. Form 1120S - S Corporation
4. Form 4562 - [Depreciation](#) & Amortization
5. Form 1040 - Sole Proprietorship
  - a. Schedule C ( Form 1040 ) - Business (non-farm)
  - b. Schedule E ( Form 1040 ) - Rental and Royalty
  - c. Schedule F ( Form 1040 ) - Farm Income
  - d. Schedule SE ( Form 1040 ) - Social Security Self-Employment

### **Employee Status**

A person is an employee if s/he is under the direct "wield and control" of an employer. The employer has the right to control the method and result of the employee's service. A self-employed person earns income directly from his/her own business, and:

1. Does not have federal income tax and FICA payments withheld from a paycheck.

**Note:** A baby sitter who works in someone else's home is considered an employee of that household, even if the individual employing him/her does not withhold taxes or FICA.

2. Does not complete a W-4 for an employer.
3. Is not covered by employer liability insurance or worker's compensation.
4. Is responsible for his/her own work schedule.

\* \* \*

#### **16.4.3.1 Income Sources**

Self-employment income sources are:

1. **Business.** Income from operating a business.

\* \* \*

Thus, the application of the rules regarding self-employment income was correct.

The second issue raised by petitioner is one regarding business depreciation. The Department explained that it added business depreciation back in as income. This is the way this calculation has been done for some time for BC+ eligibility determinations. The review was done in February and the rules at the time of that review called for the depreciation to be calculated as part of income.

#### **16.4.3.2.2 Worksheets**

If you decide to use IRS tax forms, use them together with the self-employment income worksheets ([F-16034](#), [F-16035](#), [F-16036](#) and [F-16037](#)).

The worksheets identify net income and depreciation by line on the IRS tax forms.

\* \* \*

### 3. Corporation

IRS Form 1120 - Corporation Income

### 4. Subchapter S Corporation

- a. IRS Form - 1120S - Small Business Corporation Income
- b. IRS Schedule K-1 ( Form 1120S - Shareholder's Share of Income

Next, divide IM income by the number of months that the business was in operation during the previous tax year.

The result is monthly IM income. Add this to the fiscal test group's other earned and unearned income. If, monthly IM income is a loss, add zero to the non self-employment income.

\* \* \*

#### **16.4.3.2.3 Disallowed Expenses**

Generally, expenses that are allowed by the IRS on business tax forms are considered allowed expenses for BadgerCare Plus. However, under *non-MAGI* rules, some specific expenses allowed in the calculation of Self Employment Income on the IRS tax forms but are not allowed for BadgerCare Plus. Under *MAGI* rules, countable self-employment income will be the same as the net self-employment taxable income.

#### **Depreciation and Depletion**

**Through March 31, 2014, depreciation expenses will continue to be handled using the follow process for applicants tested under non-MAGI rules:**

**Net self employment income for BC+ groups is first determined without allowing depreciation expenses.** If the group's total countable IM income exceeds 200% of the Federal Poverty Level, the self employed group is allowed a second income test. For the second test, net self-employment income is redetermined, this time deducting depreciation expenses. If the total countable IM income minus the depreciation is less than 200% of the Federal Poverty Level,, the adults and children are eligible for the Benchmark Plan. The premium for the parents and

children in the household is 5% of the household's total countable gross income including depreciation. (i.e., depreciation expenses are not deducted)

**Effective February 1, 2014 for new BC+ applicants and effective April 1, 2014 for existing BC+ members, depreciation and depletion expenses will be allowable expenses.**

So, under the rules, a calculation today would not consider depreciation as income for existing BC+ households. I note that it appears to me that even if the depreciation is not counted as income, the petitioner and her husband would not be eligible as the household income still exceeds 100% FPL. Given that, it appears that the termination was not error and the decision is affirmed.

### **CONCLUSIONS OF LAW**

The agency did not err in terminating petitioner and her husband from BC+ because the family does not meet the new income limits for a four person household.

**THEREFORE, it is ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 25th day of April, 2014

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\sJohn P. Tedesco  
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 April 25, 2014.

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