STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

BCS/155980

The attached proposed decision of the Administrative Law Judge dated April 7, 2014, is hereby adopted as the final order of the Department.

PRELIMINARY RECITALS

Pursuant to a petition filed March 7, 2014, under Wis. Stat., §49.45(5)(a), to review a decision by Milwaukee Enrollment Services to discontinue Medical Assistance (MA), a hearing was held on April 2, 2014, by telephone.

The issue for determination is whether petitioner's income puts her over the new BadgerCare Plus (BC+) income limit, and specifically whether part of petitioner's income is exempt.

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Katherine May
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #[redacted]) is a resident of Milwaukee County.
2. Petitioner has received BC+ for herself and her two children. Also in the household is petitioner's husband, but he does not receive BC+ because he receives Supplemental Security Income (SSI).
3. Petitioner is employed by the State IRIS program as a caregiver for her husband. She is paid semi-monthly, with her pay separated into personal care worker (PCW) at $12.07 per hour, and supportive home care (SHC) at $10.00 per hour. PCW services are for direct care services for the client, while SHC are for ancillary services such as cleaning, laundry, and food preparation.
4. In late February, 2014, petitioner reported to Enrollment Services that her income increased. The agency thus reviewed the household's BC+ eligibility, and did so in anticipation of the April 1, 2014 income and eligibility changes. The agency determined that petitioner's monthly gross income was $2,178.08. That amount put the household over 100% of the federal poverty level.
5. In February, 2014 petitioner earned $1,846.71 from PCW hours and $950 from SHC hours.
6. By a notice dated March 4, 2014, the agency informed petitioner that BC+ for her would end April 1, 2014 due to income being over the limit. BC+ for the children was not affected. Petitioner appealed, and benefits were continued pending this decision.

DISCUSSION

BC+ 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; BC+ Handbook, §2.1. In addition, financial requirements were changed for all households. As of April 1, income determinations will be consistent with federal income tax rules. Handbook, §16.1.3. Eligible adults cannot have modified adjusted gross income (MAGI) exceeding 100% of the federal poverty level (FPL). Wis. Stat., §49.45(23)(a); Handbook, §16.1. The 100% FPL amount is $1,987.50 monthly for a household of four in 2014. Handbook, §50.1.

Petitioner's primary testimony during the hearing was that she recently had a hip replacement surgery, and she could not afford the market place cost of insurance that would cover her providers for follow-up care. The Division of Hearings and Appeals does not have authority to make exceptions to the new financial rules for reasons of good cause or unaffordability, however, and typically that would end the discussion. Petitioner almost inadvertently raised an issue that I believe changes the result of the case.

As noted, petitioner is paid by the IRIS program to provide both PCW and SHC services. The hours are kept separately and petitioner is paid at different rates. The agency, in determining BC+ eligibility for April, took the gross income from both types of service and budgeted that amount for the BC+ determination. Petitioner noted that she had received a notice saying that the SHC portion of the income might be exempt from taxation.

Petitioner's employer sent petitioner a notice dated March 27, 2014 stating that the Internal Revenue Service announced that certain caregiver wages may be exempt. It stated that petitioner, as an IRIS worker, may have exempt wages if the wages are for nonmedical tasks, and she lives with the IRIS participant. SHC services are by definition nonmedical, and are clearly differentiated on petitioner's pay stubs from the PCW medical services. The March 27 notice cites Internal Revenue Notice 2014-7 (it actually is called an Internal Revenue Bulletin), a copy of which I obtained for the file. Bulletin 2014-7

states that as of January 3, 2014, the IRS will equate these waiver payments with foster payments. Foster payments are exempt income for BC+ purposes. Handbook, §16.2, no. 8.

It appears, therefore, that under the new rules utilizing federal tax guidelines to determine countable income, the SHC portion of petitioner's income should not be counted. Using the pay stubs in the record, petitioner's income from just the PCW hours totaled less than 100% of the poverty level. I thus will remand the case to the agency with instructions to continue petitioner's BC+ eligibility based upon only the taxable portion of her monthly income.

CONCLUSIONS OF LAW

1. Under new IRS policy, petitioner's income from SHC hours is exempt income for tax purposes.
2. If petitioner's SHC income is excluded, household income is below 100% of the federal poverty level.

THEREFORE, it is **ORDERED**

That the matter be remanded to the agency with instructions to grant petitioner BC+ eligibility for April, 2014 and beyond because excluding the portion of petitioner's income derived from SHC services leaves income below 100% of the federal poverty level. The agency shall do so within 10 days of the final decision if this decision is affirmed by the Deputy Secretary.

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, WI, 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 request (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 10th day of July, 2014.

Kevin E. Moore

Kevin E. Moore, Deputy Secretary
Department of Health Services