



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MQB/156106

PRELIMINARY RECITALS

Pursuant to a petition filed March 14, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wood County Human Services Department – Wis. Rapids in regard to Medicare Premium Assistance, a hearing was held on May 12, 2014, by telephone.

The issue for determination is whether the Department correctly determined that the petitioner is eligible for SLMB+, rather than SLMB, due to her income. Specifically, the issue is whether the Department correctly used gross royalties from an oil/gas well in counting income.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

By: Atty. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 [REDACTED] Wilson Street, Room 651
Madison, Wisconsin 53703
By: Beulah Garcia, Resolution Coordr.
Northern IM Consortium

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Taylor County.

2. The petitioner has an ongoing Medicare Premium Assistance case as a household of one person. Her case underwent a periodic review, and it was determined that her unearned income had increased. As a result, she was found eligible for the SLMB+, rather than SLMB, form of Medicare Premium Assistance, effective April 1, 2014. Medicare Premium Assistance is also referred to as the Medicare Savings program (MSP).
3. The unearned income in question is a royalty (or something similar) from a gas well in ██████████, operated by ██████████, LLC. The petitioner's share of the gross earnings from the well is \$1,464.65 annually, or \$122.05 monthly, per the 1099 Miscellaneous Income tax form. See, Exhibit 3. From that amount ██████████ actually issues \$176.04 annually (\$14.67 monthly) to the petitioner. The petitioner has no control over the management of ██████████, does not actively manage that entity, and is not an employee of that entity.

DISCUSSION

The petitioner questions the correctness of the calculation of her income for Medicaid purposes for April 2014 onward. The petitioner's gross income, other than the money received from ██████████, is not in dispute.

Available income is counted for Elderly/Blind/Disabled MA and MSP purposes; unavailable income is not counted. A few types of income are disregarded (e.g., foster care payments); none of the disregards are applicable here. *Medicaid Eligibility Handbook (MEH)*, §§32.1, 15.1.5 and 15.3 available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm> (viewed in June 2014). An example of available income are wages from a job, for which gross income is counted.

The disputed income here is a type of "unearned income." The *MEH* gives examples of unearned income that are to be either disregarded or counted. The ██████████ payments do not fall within any of the examples. *Id.*, § 15.4.

The petitioner argues that the ██████████ gross income should not be budgeted, because it is not available to her. She testified that only the net income of \$14.67 monthly is available to her, as she gets a check for just the net amount. She has supplied her 1099 tax form and a document from ██████████ to show her annual income from this asset. The ██████████ document is frankly undecipherable to any of the parties to this hearing, including this Judge. None of the deductions taken from gross income by ██████████ appear to be a reinvestment of the gross income. Deductions taken from gross revenue by ██████████ include a ██████████ volume based severance tax and revenue based severance tax. ██████████ law provides for the collection and distribution of a severance tax on oil and gas. The oil and gas severance tax is dedicated for the use of municipalities within ██████████. These taxes are not optional.

Given that the Department's policy handbook does not identify the correct treatment of this out-of-the – norm income type, federal authorities are to be consulted. The Wisconsin statute that sets out EBD Medicaid eligibility has a cross-reference to the income counting standards used in the federal SSI program:

1. ... In this subdivision "income" includes earned or unearned income that would be included in determining eligibility for ... the aged, blind or disabled under 42 USC 1381 to 1385. "Income" does not include earned or unearned income which would be excluded in determining eligibility ... for the aged, blind or disabled individual under 42 USC 1381 to 1385.

Wis. Stat. § 49.47(4)(c)1.

The most detailed source of SSI income treatment information is found in the Social Security Administration's *POMS Manual (POMS)*. *POMS* agrees with the petitioner's position here:

A. POLICY

1. Definition

Royalties include compensation paid to the owner for the use of property, usually copyrighted material (e.g., books, music, or art) or natural resources (e.g., minerals, oil, gravel or timber). Royalty compensation may be expressed as a percentage of receipts from using the property or as an amount per unit produced.

To be considered royalties, payments for the use of natural resources also must be received:

- under a formal or informal agreement whereby the owner authorizes another individual to manage and extract a product (e.g., timber or oil), and
- in an amount that is dependent on the amount of the product actually extracted.

...

5. Production or Severance Tax

When the difference between the gross and net figures represents a production or severance tax (e.g., most oil royalties will be reduced by this tax), we use the net figure when determining income for SSI purposes. The production or severance tax is a cost of producing the income and, therefore, is deducted from the gross income.

POMS, § SI 00830.510, at <https://secure.ssa.gov/apps10/poms.nsf/lnx/██████████> (viewed in June 2014). Accordingly, I conclude that the Department must budget the net royalty income of \$176.04 annually.

CONCLUSIONS OF LAW

1. The Department must budget the gas well net royalty income of \$176.04 annually (\$14.67 monthly, rather than gross royalty income).

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to re-determine the petitioner's MSP status in accord with the Conclusion of Law above, effective April 1, 2014. This action shall be taken within 10 days of the date of this Decision.

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 [REDACTED] 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 30th day of June, 2014

\sNancy J. Gagnon
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 June 30, 2014.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability