



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/156232

PRELIMINARY RECITALS

Pursuant to a petition filed March 21, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Oneida County Department of Social Services in regard to Medical Assistance, a hearing was held on April 28, 2014, at Rhinelander, Wisconsin.

The issue for determination is whether the respondent properly denied petitioner's Medical Assistance for failure to provide requested verification.

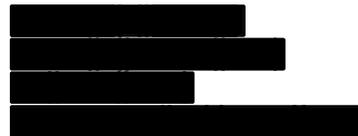
There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Attorney:



Respondent:

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

By: Attorney Michael Fugle
Oneida County Department of Social Services
Oneida Avenue
PO Box 400
Rhinelander, WI 54501

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Oneida County.

2. On or about March 25, 2014, petitioner was notified that enrollment in BadgerCare Plus for petitioner and her husband would end as of May 1, 2014. The notice indicated, in part, that the income counted for petitioner's household exceeded program limits.
3. Petitioner and her husband are limited partners in [REDACTED] and [REDACTED]. As limited partners, the petitioner and her husband have passive investments in these partnerships.
4. Neither petitioner nor her husband make management decision or perform any key functions for either limited partnership.
5. In determining the petitioner's household income, the respondent included income identified at line 17 of her 2012 IRS Form 1040.

DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. In a fair hearing concerning the discontinuance of benefits, even the "denial" of a renewal application, the burden of proof is on the Department to show by the preponderance of the evidence that the request for assistance was correctly denied. The burden then shifts to the recipient to establish that the discontinuance decision was incorrect.

In this case, the Department established a prima facie case that the discontinuance of BadgerCare Plus enrollment for petitioner and her husband was terminated due to income in excess of program limits. The petitioner's household income, as calculated by the respondent, included self-employment income ascribed to the petitioner and her husband.

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. *BadgerCare + Eligibility Handbook (Handbook)* § 16.4.3. The respondent argues a broad interpretation of self-employment, which would include the petitioner's (and her husband's) position as a limited partner in two partnerships. The petitioner argues that as limited partners she and her husband do not operate the partnerships, nor are they engaged in business via these partnerships as a means of livelihood. The *Handbook* instructs that a partnership 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. *Handbook*, §16.4.3. The petitioner's interest in the two partnerships clearly meets this definition of partnership.

The respondent correctly concluded that petitioner and her husband are self-employed, as that term is defined in the *Handbook*. See, *Handbook* § 16.4.3. The petitioner and her husband are limited partners in two partnerships. The income derived therefrom qualifies as self-employment income, as the income is derived directly from their interest in a business, rather than as an employee with a specified salary or wages from an employer. See, *Id.* The petitioner and her husband are limited investors who are engaged in the business as a means of livelihood. While their interests in the limited partnerships may not provide a large amount of income at present, the self-employment definition does not require that the self-employment income constitute the sole or main source of income. The petitioner argues that as "limited" partners they are not "engaged in the business as a means of livelihood." That argument ignores the fact that they are, in fact, partners in these partnerships with every interest in profiting therefrom. The

petitioner has not established any grounds for excluding the income that petitioner and her husband receive as partners in a partnership from BadgerCare Plus eligibility calculations.

In undated correspondence to this office, the petitioner's accountant indicated that the petitioner and her husband have reportable income from the limited partnership investments. Exhibit I. Attached to that correspondence are 2 letters, one from each partnership, which specify that the petitioner and her husband are limited partners, and that their portion of income or loss is reported to them annually on form K-1. Each letter concludes, however:

The only cash the [REDACTED] have received from this investment is an occasional disbursement representing the return of the original capital investment. The return of capital is not considered income and is therefore not reportable as income to them.

See, January 15, 2014, letters from the partnerships' Vice President [REDACTED] attached to undated correspondence from petitioner's accountant, which is identified in the record as Exhibit I. Whether there is reportable income appears to be an issue not-yet-settled by and among petitioner's accountant and the partnerships' Vice President.

I note that return of capital by investment partnerships may or not be available income to the investor. In the instant case it appears that it is available income because petitioner reported it as such on line 17 of her 2012 IRS Form 1040. All available gross income is to be counted when determining BadgerCare Plus eligibility under non-Magi rules. *Handbook*, §16.4.3.

I conclude that the respondent has presented a prima facie case evincing a correct determination that petitioner's household income exceeded BadgerCare Plus eligibility limits. The petitioner has failed to successfully rebut the respondent's arguments and establish that it was incorrect for the respondent to include petitioner's income identified at line 17 of her 2012 IRS Form 1040.

CONCLUSIONS OF LAW

1. The respondent has presented a prima facie case evincing a correct determination that petitioner's household income exceeded BadgerCare Plus eligibility limits.
2. The petitioner has failed to successfully rebut the respondent's income calculation and establish that it was incorrect for the respondent to include petitioner's income identified at line 17 of her 2012 IRS Form 1040.

THEREFORE, it is

ORDERED

That the petition for review is hereby 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 22nd day of July, 2014.

\sPeter McCombs
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 July 22, 2014.

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