



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/156931

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 17, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Marinette County Department of Human Services in regard to Medical Assistance, a hearing was held on June 02, 2014, at Marinette, Wisconsin.

The issue for determination is whether the Department erred in its calculation of BC eligibility based on petitioner’s 2013 federal tax return information.

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: Jill Messenger  
Marinette County Department of Human Services  
Wisconsin Job Center Suite B  
1605 University Drive  
Marinette, WI 54143

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Marinette County.
2. Petitioner was found eligible for BC+ on 3/3/14 based on an application filed in December 2013 through the federal marketplace. Enrollment began on April 1, 2014.

3. In late March, the agency determined that petitioner's income exceeded program limits of 100% FPL and sent notice on March 24, 2014 informing him that he would be terminated from BC+ enrollment effective May 1, 2014.
4. On March 27, 2014, petitioner called the change center and discussed his income. He called again the following day and provided his 2013 tax return. The agency determined that petitioner was over the income limit based on his 2013 tax return. The tax return reflected monthly income from the self-employment of \$663.93
5. Petitioner receives income from other sources as well including social security retirement of \$642 per month.
6. On April 1, 2014, petitioner called the change center and explained that he was now receiving social security and would not be earning the same income from the self-employment reflected on the tax return.
7. Petitioner sent in self-reported income on April 7, 2014 reflecting \$480.13 per month from his self-employment.
8. Petitioner appealed the May 1, 2014 termination.

### 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, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (viewed in April 2014).

The petitioner must also pass an income test. Effective April 1, 2014, an eligible adult 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 \$972.50 monthly for a household of one, \$1,310.83 for a household of two persons, and \$1,649.17 for a household of three in 2014. *Id.*, § 50.1.

The agency terminated petitioner because it determined that his income exceeded this threshold based on his 2013 tax return. The agency determined the tax return to be the most reliable evidence of petitioner's income. Petitioner does not dispute that he is not eligible if the tax return is used. Instead, petitioner's argument at hearing is that the agency erred in using the tax return rather than using petitioner anticipated earnings based on his self-reported earnings. Petitioner claims that his circumstances have changed because he now receives additional unearned income and will not be working his self-employment flea market business as much as in past years. He provided self-reported income for January through March 2014 which reflects a reduced income. The agency, considering the flea market business "seasonal" employment, was not convinced that this is accurate or reflective of anticipated earnings as the agency believes petitioner's income will be higher in the better weather months ahead.

According to the BC Eligibility Handbook, the agency should use tax return information unless certain conditions have occurred including a demonstrated change in circumstances. BC+ Eligibility Handbook at § 16.4.3.2.1. If there has been such a change, the agency may determine self-employment income based on evidence other than a previous tax return in certain situations:

#### **16.4.3.2.4 Anticipating Earnings**

If past circumstances don't represent present circumstances, calculate self-employment income based on anticipated earnings. A change in circumstances is any change that can be expected to affect income over time. It is the person's responsibility to report changes.

The date of an income change is the date you agree that a change occurred. You must also judge whether the person's report was timely to decide if the case was over or underpaid. Changes are then effective according to the normal prospective budgeting cycle. Don't recover payments made before the agreed on date.

Other instances when you would use anticipated earnings:

1. The business wasn't operating at least one full month during the previous tax year.
2. The business wasn't operating six or more months at the time of the interview.

**Examples of changed circumstances are:**

- The owner sold or simply closed down the business.
- The owner sold a part of his business (e.g., one of two retail stores).
- The owner is ill or injured and will be unable to operate the business for a period of time.
- A plumber gets the contract on a new apartment complex. The job will take nine months and his/her income will increase.
- A farmer suffers unusual crop loss due to the weather or other circumstances.
- There's a substantial cost increase for a particular material such that there will be less profit per unit sold.
- Sales, for an unknown reason, are consistently below previous levels. The relevant period may vary depending on the type of business (consider normal sales fluctuations).

Given the guidance of the Handbook, I must concur with the Department's interpretation. All the examples provided have the common theme that they represent a definite circumstance with a firm increase or cessation of business operations and income. In cases of increase, the increase is predictable (such as a new contract). In the examples of a reduction in income the reduction is similarly predictable such as illness making operation impossible, or sales consistently below previous levels. In this case, petitioner is merely predicting or planning, that he will have less income. He has not shown that there has been any change in circumstances.

In this case, I would possibly have been persuaded if petitioner could have provided sales/income comparisons with the previous year for January through March. Such information would have reflected what decrease in income is actually being realized. Petitioner, however, was defensive and claimed to not keep such records. Petitioner argued that the agency was wrong that the income cycles seasonally and that his summer income would not be higher. I found that argument to be persuasive and based on common sense. Petitioner did not present previous sales history documentation to establish this as a flawed assumption. He simply stated this was not so. He similarly did not have records or reliable estimates of how many hours he worked in the pertinent months in 2013 or 2014. Relating this this line of questioning by this ALJ, petitioner was again defensive claiming that these questions were not relevant to his income. But, petitioner misses the point that his claim of reduced future income was based on his claim that he would be putting less time into his business now that he is getting more income from SS. Overall, I found petitioner to not be credible and to be goal-oriented in saying what he felt he needed to say in order to get benefits. Petitioner's demeanor was defensive and bordered on belligerent. Without documentation of income I do not find his testimony to be persuasive and similarly would not find his self-reported income more reliable than a formally filed federal tax return.

Using the tax return information, petitioner's income is 114.38% of the FPL which causes him to be ineligible for BC+.

**CONCLUSIONS OF LAW**

The Department did not err in relying on petitioner's 2013 tax return in their determination of eligibility as this was the most reliable evidence of petitioner's actual 2014 income.

**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 10th day of June, 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 June 10, 2014.

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