



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/157427

PRELIMINARY RECITALS

Pursuant to a petition filed May 02, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance, a telephone hearing was held on June 04, 2014. Prior to issuance of this decision, petitioner had filed a request for hearing regarding a prior Medical Assistance denial. That matter was identified as BCS/156437, and a separate decision has been issued in that matter. Petitioner consented to hold this matter open for a period of 30 days.

The issue for determination is whether the respondent correctly calculated petitioner's monthly earned income.

There appeared at that time 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: Leslie Vosters

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. On March 13, 2014, petitioner applied for Medical Assistance. This was denied by the respondent on March 24, 2014, due to income in excess of program limits. The notice indicated that petitioner's counted income was \$1,220.33, and the counted income limit was \$972.50.
3. On March 25, 2014, petitioner reapplied for Medical Assistance. She was again denied on April 29, 2014, due to income in excess of program limits. The notice indicated that petitioner's counted income was \$980.43, and the counted income limit was \$972.50.
4. At the time of application, petitioner reported earned income from the [REDACTED], [REDACTED], [REDACTED], [REDACTED], as well as unearned Social Security income.

DISCUSSION

For several years, the petitioner has worked during the nine months of the regular school year as a substitute teacher. When determining her medical assistance benefits, the agency did not average the income she received during the nine months of the school year over 12 months. Instead, the respondent used a 3 month average of income; respondent's representative conceded that it can look at a longer period of time, if that is verified. The respondent's representative specifically conceded that the Department can look at verified annual income when determining eligibility.

Several sections of the *Medicaid Eligibility Handbook* make it clear that fluctuating income should be averaged as long as it is predictable. Thus, *Medicaid Eligibility Handbook*, § 15.2.3, which pertains to fluctuating income states:

If the amount or frequency of regularly received income is known, average the income over the period between payments. If neither the amount nor the frequency is predictable, do not average; count income only for the month in which it is received.

The *Medicaid Eligibility Handbook*, § 15.2.2, spells out how to prorate income that is received less than monthly:

Income received on a yearly basis or less often than monthly, that is predictable in both amount and frequency, must be converted to a monthly amount or prorated.

Prorate means "to distribute proportionately."

[text box example omitted]

Prorating is applied to a member's income when the income is received less often than monthly. By prorating, income is distributed evenly over the number of months between payments

Finally, *Medicaid Eligibility Handbook*, § 25.8.3, which pertains to migrant workers, states:

Use annualized earned income for migrant worker's income. "Annualized earned income" is a prospective monthly estimate of earned income based on the estimated total gross annual earnings divided by 12. Annualized income can be based on the past 12 months of the migrant family's income if it is anticipated that last year's income is the best estimate of the current year's prospective income.

Taken together, these sections demonstrate that averaging predictable income is the rule rather than exception. While a substitute teacher is not a migrant worker, I find that their income fluctuates in a very similar way. The income is predictable for only certain months out of the year; as such, I agree with the

petitioner that averaging her annual income is the most accurate manner of determining petitioner's prospective monthly income. Finally, I note a previous similar Medical Assistance decision, wherein ALJ Schneider wrote,

The BC+ Handbook, App. 16.6, says that fluctuating income should be averaged over the period between payments. I am uncertain what that means, but just as with a self-employed person, I find that the best way to estimate prospective income for a substitute teacher is to look at the prior year's income.

DHA Decision BCC-74/130234 (March 2011). I concur.

CONCLUSIONS OF LAW

Due to the fluctuating nature of petitioner's substitute teaching income, her prospective monthly income for Medical Assistance eligibility purposes should be determined based upon a yearly average of said income.

THEREFORE, it is

ORDERED

That this matter shall be remanded to the respondent with instructions to re-determine petitioner's Medical Assistance eligibility using an average income based, in part, upon petitioner's 2013 yearly income from substitute teaching. Petitioner shall supply a copy of all her 2013 W-2's to the respondent via US Mail postmarked no later than July 9, 2014. The respondent shall complete its re-determination of petitioner's earned and unearned (Social Security) income and notify petitioner of her Medical Assistance eligibility no later than July 19, 2014. If petitioner fails to supply her 2013 tax forms to the respondent via US Mail postmarked no later than July 9, 2014, then her appeal shall be 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 26th day of June, 2014.

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 26, 2014.

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