



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/158784

PRELIMINARY RECITALS

Pursuant to a petition filed June 30, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on July 30, 2014, at Racine, Wisconsin.

The issue for determination is whether the agency correctly denied the petitioner's BadgerCare (BC) Plus application due to income in excess of program limits.

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: Rhonda Kramer

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County. Petitioner's household size is two including Petitioner and his wife. There are no children in the household.
2. Petitioner applied for BC Plus benefits on March 24, 2014. The agency processed his application on March 30, 2014. The agency then sent out verification forms to verify income.

3. Petitioner's wife is employed at [REDACTED] with a monthly gross income of \$1,170.
4. Petitioner is half owner of a business. In 2013 Petitioner's business had ordinary business income of \$7,576. [REDACTED] 2013 gross profit was \$56,428. From that they subtracted \$33,000 as compensation paid to officers. Petitioner is an officer and received a compensation of \$16,500. Next they subtracted deductions totaling \$6,704. This gave the business ordinary business income of \$7,576.
5. Petitioner's total household monthly gross income is \$1,485 consisting of \$1,170 earned income from Petitioner's wife's employment and \$315 from Petitioner's business income.

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, at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (viewed in March 2014). The petitioner meets the nonfinancial eligibility tests for the program.

Petitioner must also pass an income test. An eligible 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, and \$1,310.83 for a household of two persons in 2014. *Id.*, § 50.1.

When determining eligibility, the agency must include all taxable income. *BadgerCare Plus Handbook*, § 16.1.3. Self-employment income is included as taxable income. *BadgerCare Plus Handbook*, § 16.4.3. Self-employment income is income derived directly from one's own business. *Id.* This income specifically includes income from operating a business. *BadgerCare Plus Handbook*, § 16.4.3.1. In calculating income the agency is to use IRS form 1120S for small business corporation income. *BadgerCare Plus Handbook*, § 16.4.3.2.2. The agency is then must divide the yearly income by the number of months the business was operating to arrive at the monthly gross income. *Id.*

In this case, Petitioner does not dispute that his wife's monthly gross income is \$1,170. The only issue then is the business income. Petitioner is half owner of [REDACTED]. As half owner of the business, he is entitled to half of the business' income. The 1120S form lists \$7,576 as the business' income. Half of that is \$3,788. That amount divided by the 12 months that the business was operating is \$315.67. \$1170 plus \$315.67 is \$1485.67. This amount is the income that the agency used in determining Petitioner's eligibility for the BC Plus program. \$1,485.67 is over the limit of \$1,310.83 for a childless adult household of 2, and therefore the agency correctly denied Petitioner's BC Plus application.

Petitioner does not believe his business income should be included in his household's monthly gross income. Without this business income his household's monthly gross income would be under the BC Plus program limit of \$1,310.83 for a childless adult household of 2. Petitioner argued that even though the tax form states that the business had an income of \$7,576, that money is not available to him because it is used to pay various business expenses. Petitioner did not give any specifics as to what expenses or what amounts and was unable to answer specific accounting questions as he has an accountant who prepares the business' tax forms.

The BC Plus program requires the agency to verify income. *BadgerCare Plus Handbook*, § 9.9. Verification means to establish the accuracy of verbal or written statements made by, or about a group's circumstances. *BadgerCare Plus Handbook*, § 9.9.

The verification source for Petitioner's business as a [REDACTED] is the IRS 1120S form. Petitioner properly provided that form that showed he had income from his business. I would also note that the 1120S shows that Petitioner's was paid \$16,500 in compensation in 2013. That amount was deducted from the business income as an expense. This \$16,500 in income was not included in the agency's calculation of Petitioner's monthly gross income.

At the hearing, Petitioner implicitly argued that this business income could be more properly characterized as capital gains. Even if this income is characterized as capital gains, capital gains that are regular and predictable are taxable income when determining BC Plus eligibility. *BadgerCare Plus Handbook*, § 16.1.5. The agency properly calculated Petitioner's business income under the self employment section of the BC Plus handbook, however if the agency had incorrectly calculated his business income as capital gains, Petitioner would still be ineligible for the BC Plus program.

CONCLUSIONS OF LAW

The Petitioner's household income exceeds the BC Plus program limits, and the agency correctly denied Petitioner's BC Plus application.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

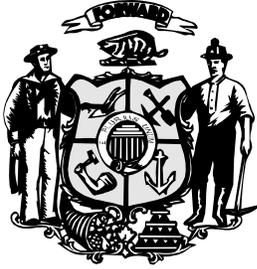
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 13th day of August, 2014

\sCorinne Balter
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 August 13, 2014.

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