



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

BCS/159486

PRELIMINARY RECITALS

Pursuant to a petition filed July 29, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on August 26, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in determining eligibility for BadgerCare based on the income of the 30 days prior to the determination rather than an average monthly income based on the previous 12-month period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Jose Silvestre
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Waukesha County.
2. Respondent was informed of petitioner's summer employment with [Redacted] testing on July 10, 2014.

3. The Department sought verification of earnings, which was received on July 15, 2014.
4. The verified income placed the petitioner at 138.86% of the federal poverty level. The Department sent notice to petitioner denying eligibility for BadgerCare effective 8/1/2012.
5. Petitioner filed a timely request for hearing.

DISCUSSION

BadgerCare Plus is Wisconsin's medical assistance program for those who are not elderly or disabled. Wis. Stat. § 49.471. Since April 1, 2014, BadgerCare Plus usually allows adults to be eligible only if their income is below 100% of the federal poverty level; for children, the limit is 300% of the federal poverty level. Wis. Stat. § 49.471(4)(a).

Petitioner reported seasonal employment to the respondent. As a result of this employment, she earned substantially more during the summer of 2014, than during the other months of the year. Petitioner does not dispute the income calculations completed by the Department. The only issue raised by petitioner is whether it is possible for the Department to consider annual income when determining eligibility rather than determining eligibility based on the prior thirty days as the Department has done.

The Department representative conceded that it could use annual income for its determination under the circumstances presented in this matter

Prospective budgeting is used by the respondent to determine eligibility for the program. The Department uses prospective budgeting to best predict income *over the BC+ certification period*. See *Process Help* publication at §16.4:

16.4.1 Prospective Budgeting Introduction

Prospective Budgeting is the process of estimating the household anticipated income during the certification period. At application, review or reported change in employment, the IM worker must calculate the amount of income the household will receive in the future months.

When prospectively budgeting an applicant's income, take into consideration the income already received by the household and any anticipated income the household and the agency are reasonably certain will be received during the certification period.

Use income received during the last 30 days as an indicator of the income that is and will be available to the household during the certification period unless that income does not accurately represent anticipated future earnings due to a change that has been indicated by customer.

At application or review, when budgeting income for FS, use the income received in the 30 days prior to the interview date **as long as that income accurately reflects the best estimate of the income for the future months.**

When budgeting income for BC + only cases you will be use the gross monthly income verified by the previous 30 days gross **or by the best information available.**

DHS *Process Help* publication at § 16.4.1 (emphasis added). The document also provides:

Note: Remember, **do not use past income as an indicator of anticipated income when changes in income have occurred or can be anticipated during the certification period.** This includes a job ending or beginning, a change in hours or rate of pay or a change in the amount of overtime worked.

DHS *Process Help* publication at § 16.4.2 (emphasis added).

Thus, it is clear that a worker may use other information other than the previous 30 days income in his prediction of the member's income over the certification period which is one year. Indeed, the guidance provides that the worker should use the best information to make an accurate prediction.

The petitioner testified that she reported the fact that her employment was seasonal to the respondent, and electronic case comments corroborate this testimony.

I conclude that the Department must consider the seasonal nature of petitioner's employment in determining the best estimate of income over the certification period. The Department is not required to base such a determination only on the previous thirty days of income. If the Department finds that after gathering additional facts (which, for example, could include contact with the employer to verify the seasonal nature of the employment) that the prospective budgeting based on the higher monthly income is not an accurate predictor, then the Department has the ability to budget based on the other information. Ultimately, the Department must decide what is most reliable.

CONCLUSIONS OF LAW

The Department should use the most reliable information to accurately predict the petitioner's income during the certification period. The Department is not required to use the prior thirty days' income if that is not the most reliable and accurate predictor.

THEREFORE, it is

ORDERED

This matter is remanded to the Department and its county agent with instructions that it gather necessary and appropriate facts to determine the most reliable and accurate prediction of petitioner's income during the one-year certification period. The Department shall then re-determine eligibility based on that information. New notice regarding the eligibility determination shall be sent to petitioner. These actions shall be completed within 10 days 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.

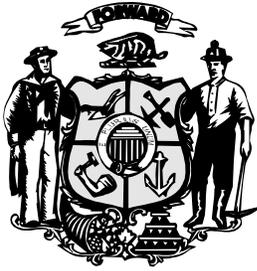
APPEAL TO COURT

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 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 17th day of October, 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 October 17, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability