



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/159918

PRELIMINARY RECITALS

Pursuant to a petition filed August 15, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Washburn County Department of Social Services in regard to Medical Assistance, a hearing was held on September 24, 2014, at Shell Lake, Wisconsin.

The issue for determination is whether the petitioner's child is eligible for BadgerCare Plus.

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: Rosanne Livingston
Washburn County Department of Social Services
110 W 4th Avenue
PO Box 250
Shell Lake, WI 54871

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Washburn County.
2. The petitioner applied for medical assistance on May 8, 2014. The [REDACTED] denied his request on June 30, 2014, after determining that his income exceeded the program's limit.

3. The petitioner is an ordained [REDACTED] [REDACTED].
4. At some point the petitioner compensation was modified so that a large portion of it was changed from regular income to a housing allowance.

DISCUSSION

Children are eligible for BadgerCare Plus, Wisconsin's medical assistance program for those who are not elderly or disabled, if their household's countable income does not exceed 300% of the federal poverty level. Wis. Stat. § 49.471(4)(a)3g. Income is determined as it is in § 36B(d)(2)(B) of the Internal Revenue Code. *See* Wis. Stat. § 49.471(7)(e) *referring to* 42 CFR 435.603(d)(1) and (e). This section requires agencies to determine income using modified adjusted gross income. Section 107 of the IRC allows ministers to deduct their housing allowance from their income. The petitioner is an [REDACTED] [REDACTED] who contends that the agency incorrectly found him ineligible after including his housing allowance as part of his income. The parties agree that the petitioner's daughter is ineligible if the allowance is counted as income and that she is eligible if it is not counted.

The county agency concedes that a minister's housing allowance is not income but points out that the petitioner never reported it as anything but income. He responds that the application form did not allow him any means to report the housing allowance as separate from income. But he also conceded that when he applied in January 2014—the matter has been going on for a long time—his income did not include a housing allowance; this came later and modified his paycheck so that less of it was considered income. He does not remember exactly when this happened; nor could he say how the paycheck divides income and the housing allowance.

My guess is that if the petitioner had been receiving the housing allowance when he applied, the verification of his income would have made this clear. But a guess is speculation, which is not a basis for making a finding. The petitioner testified that he tried to amend his application. Given his profession, I assume he takes the oath he made before testifying seriously. Given the state of the evidence, I am going to remand this matter to the agency with instructions to continue processing his application and to consider any proof he submits concerning his income when it does. He must provide the agency with enough information for it to determine when the manner in which he was paid changed and how much his countable income was throughout the period since his application. If he needs more than 10 days to do this, he must call the Division of Hearings and Appeals and request that the record be left open.

CONCLUSIONS OF LAW

There is not enough evidence to determine whether the petitioner is eligible for medical assistance.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with the following instructions:

1. Within 10 calendar days of the date of this decision, the petitioner shall present enough proof to the county agency for it to determine when he received his housing allowance and, assuming his income fell at below 300% of the federal poverty level at some point, when this occurred.
2. Within 10 days of receiving the petitioner's information, but no later than November 11, 2014, the county agency shall redetermine his daughter's eligibility for BadgerCare Plus. When doing so, it shall not count as income any housing allowance he receives. Any eligibility shall be made retroactive consistent with the date of the application, the petitioner's financial situation, and the relevant BadgerCare Plus rules.
3. If the petitioner disagrees with the agency's decision, he may file a new appeal.

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 October, 2014

\sMichael D. O'Brien
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 October 10, 2014.

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