



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/161200

PRELIMINARY RECITALS

Pursuant to a petition filed October 10, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Brown County Human Services in regard to Medical Assistance, a hearing was held on November 12, 2014, at Green Bay, Wisconsin.

The issue for determination is whether the respondent correctly denied petitioner's Medical Assistance application.

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: Allison Van Groll
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner is separated from her husband, who resides in Minnesota.

3. Petitioner applied for MA benefits, and at the time of application indicated that she and her estranged husband file taxes jointly as a married couple.
4. On October 3, 2014, the respondent issued written notice to petitioner indicating that petitioner's BadgerCare Plus application was denied due, in part, to income exceeding program limits.

DISCUSSION

Prior to April 1, 2014, the income limit for BC+ was 200% of the FPL. State law changed effective April 1, 2014 following the passage of 2013 Wisconsin Act 20. As of that date the limit for caretaker parents was reduced to 100% of the FPL, which, for a four-person household is \$1,987.50 and for a one-person household is \$972.50. See Wis. Stat., §49.471(4)(a)4.b for the new law, and the BC+ Handbook, Appendix 50.1 for the limit. The new law also changed how income is budgeted. Now income is budgeted based upon tax relationships as well as family relationships, and income is based upon taxable income under Modified Adjusted Gross Income (MAGI) rules. Handbook, § 2.8.2, definition of "MAGI." The changes occurred as of April 1, 2014 for new applicants, and when current recipients completed reviews.

The respondent asserted that it must include petitioner's spouse's income when determining eligibility.

2.3.2.1 Forming the Test Group using MAGI Tax Filing Rules

All MAGI groups are based on a "target" individual. Each person who can become eligible for BC+ on the application will be a target during the eligibility determination for a case.

Tax Filers

If the individual is a tax filer and is NOT being claimed as a dependent by anyone else, then the individual's MAGI group consists of the tax filer, the tax filer's spouse, and any dependents the tax filer is claiming.

Out-of-the-Home Tax Dependents

A tax filer is able to claim individuals who live outside of their home as their tax dependents. Common examples include college students and other adult children, elderly parents, or siblings who do not live with the filer(s). Tax filers can also claim a deceased child as his or her tax dependent in the year that the child has died. In these instances, the deceased child would be included in the tax filer's group size, though the child would not be eligible for benefits on that application.

Deceased Co-Filers

It is possible for an individual to file his or her taxes jointly with a deceased spouse for the taxable year in which the spouse died. However, unlike deceased tax dependents, they will not be included as a household member.

Household Members in the Military

Deployed military members are still considered part of a tax household. Under MAGI rules, the military member's taxable income will count in the household, and he or she will also be included in the household's group size, as appropriate. If a household member is absent due to military activity, he or she may be included in the group size, but will not be eligible for assistance on this case.

Married Couples

Married individuals who are living together are always included in each other's group size, even if they are filing taxes separately. **If a married couple is living apart but**

filing jointly, the couple is included in each other's group size. If the married couple is living apart and filing taxes separately, or are not planning to file taxes, do not include them in each other's group size.

BC+ Handbook, § 2.3.2.1 (emphasis added).

The petitioner argued that she and her husband are estranged, and that it is very difficult to obtain documentation from him, as requested by the respondent. Still, I find no way around the explicit requirement that the respondent consider petitioner's estranged husband's income when determining petitioner's financial eligibility due to the fact that their tax filing status is 'married filing jointly.' This may change in the future, but the petitioner has not established any error by the respondent in this instance.

CONCLUSIONS OF LAW

Petitioner and her husband are living apart but filing jointly, and therefore the couple is included in each other's group size.

THEREFORE, it is

ORDERED

That petitioner's appeal is hereby 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 25th day of November, 2014.

\sPeter McCombs
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 November 25, 2014.

Brown County Human Services
Division of Health Care Access and Accountability