



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/161262

PRELIMINARY RECITALS

Pursuant to a petition filed October 14, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Fond Du Lac County Department of Social Services in regard to Medical Assistance, a hearing was held on November 24, 2014, at Fond Du Lac, Wisconsin.

The issue for determination is whether the agency erred in its termination of BC+ for petitioner and her husband due to being over income.

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: Deb Bohlman

Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County.
2. Petitioner works in a school as an aide. She is an employee typically working under a contract with a contract term of nine months.

3. Petitioner lives in a home with her husband, [REDACTED] and two children she has in common with a father who lives out of the home.
4. The father of the child G. claims G. on his tax return as a dependent. Petitioner claims the other child on her tax return that she files jointly with her husband.
5. The agency determined eligibility based on the nine months of income budgeted over a nine month period. The agency considered the household a 3-person household for financial eligibility purposes.
6. On 10/8/14, the agency sent notice informing petitioner that she and her husband would be discontinued from BC+ effective 10/1/14.
7. Petitioner appealed.

DISCUSSION

Petitioner raises two issues in this appeal. First, she argues that her income as a school employee which is paid over the nine month period of the school year should be averaged over a 12-month period. The pertinent program rule is as follows:

1. Contractual Income

This provision applies primarily to teachers and other school employees.

When an employed BC+ group member is paid under a contract, either written or verbal, rather than on an hourly or piecework basis, the income is prorated over the period of the contract.

BC+ Eligibility Handbook § 16.4.1. Under this rule, the agency is correct to budget the income over the period of the school employment contract period of nine months. Technically, petitioner is not employed during the summer and is certainly free to apply for benefits at that time or seek other employment to earn additional income.

Petitioner's second argument is that her household should be considered a 4-person household. She argues that G.'s father claims him as a dependent only as a term of a divorce settlement. The pertinent rules follow:

2.3.2 MAGI Test Group

Beginning February 1, 2014, BC+ eligibility determinations will use Modified Adjusted Gross Income (MAGI) rules. MAGI rules are based on the concept of an individual's tax household, not necessarily on the physical household or family relationships.

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.

Eligibility is determined for each person separately. That is, the household for the eligibility analysis of a child may be different than that of a parent. In this case, because petitioner and her husband are tax filers the group for purposes of eligibility analysis is the spouse and any dependent. G. is not a dependent and is not part of the group.

Petitioner argues that the relationship rules set forth on BC+ Eligibility Handbook § 2.3.2.1 and 2.3.2.2 should apply. The relationship rules are relevant to the determination for eligibility of G. as a target of analysis because he is claimed by a non-custodial parent outside the home. But, that is not the case for petitioner or her husband. Tax filer rules apply to them as each person is analyzed separately per § 2.3.2.1.

CONCLUSIONS OF LAW

The agency did not err in its discontinuance of BC+ for petitioner and her husband.

THEREFORE, it is ORDERED

That this appeal is 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 November, 2014

\sJohn P. Tedesco
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 26, 2014.

Fond Du Lac County Department of Social Services
Division of Health Care Access and Accountability