FH
Redact

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

BCS/162742

PRELIMINARY RECITALS

Pursuant to a petition filed December 16, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Polk County Department of Social Services in regard to Medical Assistance, a hearing was held on January 15, 2015, at Balsam Lake, Wisconsin.

The issue for determination is whether the county agency correctly determined the petitioner's income and medical assistance eligibility.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Redact
Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # Redact) is a resident of Polk County.
2. The county agency denied the petitioner's application for BadgerCare Plus after determining that her household income exceeds the program's limit. She seeks benefits retroactive to July 1, 2014.
3. There are two adults and three children in the petitioner's household.

4. The petitioner and her husband's monthly income is $1,480.83.

DISCUSSION

The county agency denied the petitioner's August 27, 2014, application for BadgerCare Plus on August 27, 2014. She appealed, and the Division of Hearings and Appeals remanded the matter to the agency with instructions to determine eligibility retroactive to July 1, 2014, if she verified her household's income. (I cannot find the actual decision, but it is not disputed.) She provided this information, but the agency continued to deny the application, finding that her household's income exceeds the program's limit.

(The petitioner and her husband applied separately. They should have applied as a single household. Both appealed. I will issue virtually identical decisions for each.)

BadgerCare Plus is Wisconsin's medical assistance program for those who are not elderly or disabled. Effective April 1, 2014, the governor and legislature lowered the amount of adjusted gross income a household can have and still be eligible for benefits to 100% of the federal poverty level for adults; the income limit is 306% for children. Wis. Stat. § 49.471(4)(a); *BadgerCare Plus Handbook,* § 16.1. For a five-person household, the size of the petitioner's, 100% of the federal poverty level is $3,225.83 and 306% is $7,117.05. *BadgerCare Plus Handbook,* § 50.1. The primary issue is whether the agency correctly counted the partnership income of the petitioner's husband.

Income includes all social security and taxable income of anyone in the household except the income of dependent children whose income is low enough that they do not have to file a federal income tax return. *BadgerCare Plus Handbook,* §§ 2.8.2 and 16.1.3. Net taxable self-employment income is used when determining BadgerCare Plus benefits. *BadgerCare Plus Handbook,* § 16.4.3.2.3. Losses from one business can offset income from another, but an overall loss from self-employment cannot offset other income, whether earned or unearned. Nor can losses from unearned income offset a gain in earned income. *BadgerCare Plus Handbook,* § 16.4.3.2.2

I cannot tell exactly how the agency made its decision because it did not include its notice of decision or any other document showing how income was counted. Nor did its summary letter state anything relevant other than that it denied the petitioner's application because she was over the program's income limit; the summary did not include a single figure about what income was used to determine that it was too high. It did submit the petitioner and her husband's 2013 tax information, which I will use. The couple filed separately that year and, unlike now, had different last names. I assume, but do not know for sure, that they have been married since filing that tax return.

The petitioner's return indicates that she made $9,520 in 2013. I do not believe this is challenged.

Her husband's individual return indicates that his adjusted gross income was $8,250. It appears that all of this was from one or more partnerships. Whether some of these lost money is irrelevant because losses from one self-employment venture can be subtracted from the gains of another. Somehow the agency determined that based upon the partnership tax return his income was much higher. I do not understand how it reached this conclusion because only his share of the partnership earnings counts as his income, and any partnership money he earned would show up on his individual federal tax return. Therefore, I find that his annual income is $8,250.

Adding the petitioner's $9,520 income to her husband's $8,250 income equals $17,770 in total income for the year. Dividing this by 12 gives $1,480.83 in monthly income. Because this is below the poverty level for a five-person household, their entire household is eligible for benefits.

I note to the petitioner that she must report any change of income that occurs when her 2013 federal income taxes are determined.

CONCLUSIONS OF LAW

The petitioner's household is eligible for BadgerCare Plus because their countable income is less than the federal poverty level.

THEREFORE, it is **ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision, the county agency take all steps necessary to ensure that the petitioner's household is found eligible for BadgerCare Plus retroactive to July 1, 2014.

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 23rd day of January, 2015

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\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 January 23, 2015.

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