



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

BCS/163173

PRELIMINARY RECITALS

Pursuant to a petition filed January 14, 2015, under Wis. Stat., §49.45(5)(a), to review a decision by the Dane County Dept. of Human Services to deny Medical Assistance (MA), a hearing was held on January 28, 2015, by telephone.

The issue for determination is whether the agency used correct income in processing petitioner's BC+ gap filling application.

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Petitioner's Representative:

Atty. Eva Shiffrin
Disability Rights Wisconsin
131 West Wilson Street, Suite 700
Madison, WI 53203

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jeremiah Cook
Dane County Dept. of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a 59-year-old resident of Dane County.
2. Petitioner is a one-person household for MA purposes. She received subsidized health insurance though the federal Marketplace in 2014. On December 12, 2014, she applied to the Marketplace for the 2015 subsidy.

3. Because petitioner is expecting to undergo back surgery in 2015 that will require her to be off work for as much as one year, petitioner estimated that she would earn \$4,192 in 2015. Because the estimated income was below 100% of the federal poverty level (FPL), petitioner's subsidy application for 2015 was denied. See Exhibit 8, page 3 of 13.
4. On December 16, 2014, petitioner applied for BC+ at the Dane County agency under the so-called "gap filling" policy. The county reviewed the request and eventually denied it based upon petitioner's 2014 income, verified through a wage match and updated agency information to be over 100% of the FPL.

DISCUSSION

Petitioner filed this appeal to contest the denial of her gap filling BC+ application. The policy is described in DHS Operation Memo no. DHS-14-41. It notes that while current BC+ "MAGI" rules base eligibility on current monthly income, the Marketplace uses prospective annual income under "36B rules" to determine eligibility for a Marketplace subsidy. Thus it is acknowledged that a person could be below 100% of the FPL for subsidy purposes, but above 100% for BC+ purposes.

Importantly for this case, the Memo provides on page 2:

To address this gap between MAGI rules and 36B rules, CMS has indicated that if a state denies someone based on current monthly income above 100% FPL, but the FFM subsequently determines that they are below 100% FPL based on 36B rules, the FFM will send this application to the state as a "gap filling" referral. *States are then required to certify applicants for Medicaid (or in Wisconsin's case, BC+) based on a monthly equivalent of their expected annual income.*

Italics added. In this case the county did not use the monthly equivalent of expected annual income but instead used 2014 income. That clearly is incorrect. The whole point of gap filling is to catch individuals whose recent income is too high for BC+, but whose expected income will make them ineligible for Marketplace subsidies. I conclude, therefore, that the county used incorrect income in determining petitioner's gap filling application. It should have used petitioner's expected yearly income from her Marketplace application, divided by twelve. I will remand the matter to the county to re-determine petitioner's eligibility.

CONCLUSIONS OF LAW

The county used incorrect income in processing petitioner's BC+ gap filling application because it used her 2014 yearly income rather than her 2015 expected income.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to re-determine petitioner's BC+ gap filling application using the monthly equivalent of her expected 2015 yearly income. The county shall do so 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 4th day of February, 2015

\sBrian C. Schneider
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 February 4, 2015.

Dane County Department of Human Services
Division of Health Care Access and Accountability
Attorney Eva Shiffrin