



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/163908

PRELIMINARY RECITALS

Pursuant to a petition filed February 10, 2015, under Wis. Stat., §49.45(5)(a), to review a decision by Milwaukee Enrollment Services to deny Medical Assistance (MA), a hearing was held on March 5, 2015, by telephone.

The issue for determination is petitioner's income for BadgerCare Plus (BC+) MA purposes.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Pang Thao-Xiong
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner applied for BC+ as a one-person household on December 11, 2014. She reported two sources of income, and provided copies of her 2013 income tax returns. One source of income was self-employment, and the other was listed as "other."
3. On December 24, 2014 the agency requested verification of petitioner's self-employment income and other income with a due date of January 12, 2015. On January 12 petitioner provided a

handwritten letter signed by her and her father as partners of a [REDACTED] saying that they pay themselves cash of \$225 per week.

4. On January 13 the agency notified petitioner that BC+ was denied because she did not verify information and because her income was over the limit. The agency determined petitioner's income by taking net income from her 2013 tax return and adding \$225 per week, which put monthly income at \$1,482.25.
5. Petitioner's only income is shown on the 2013 tax return. The "other" income is from [REDACTED] [REDACTED] at Line 21 of her 1040, and the income from the [REDACTED] is listed at Line 17. The cash payments to her come from that income. In addition, the statement that they pay themselves \$225 per week was an estimate; they actually pay themselves based upon money available each week.

DISCUSSION

An MA recipient is required to verify information that can affect eligibility. Wis. Admin. Code, §DHS 102.03. If the household fails to verify required information by the time limit, the agency may deny the benefits. Wis. Admin. Code, §DHS 102.03(1). The agency should assist the applicant if she requests assistance. BC+ Handbook, App. 9.8. If sources of verification are unavailable, the agency should use the best information available. Id.

The Handbook, App. 9.11.4, provides as follows:

Deny or reduce benefits when all of the following are true:

1. The member has the power to produce the verification.
2. The time allowed to produce the verification has passed.
3. The member has been given adequate notice of the verification required.
4. You need the requested verification to determine current eligibility. Do not deny current eligibility because a member does not verify some past circumstance not affecting current eligibility.

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 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, App. 2.8.2, definition of "MAGI."

The agency denied petitioner's application for two reasons. First it found that she failed to verify her income. At the hearing, however, it became apparent that petitioner verified her income when she provided her 2013 income tax returns. There was confusion about the "other" income, but it is listed on the return. Both sources of income are from self-employment entities. There are no pay stubs or W-2s, and thus the tax returns, prepared by a licensed accounting firm, are the best evidence of petitioner's income.

Prior to the introduction of MAGI rules certain business expenses including depreciation and loss carryovers were not allowed in self-employment income and had to be added back in to net income when determining the person's income for MA purposes. Under MAGI rules those deductions are allowed. Under MAGI the only self-employment expenses not allowed are charitable donations, work-related personal expenses (such as transportation to and from work), and expenses such as pension benefits and retirement programs for the business owner. BC+ Handbook, App. 16.4.3.2.3.

Since the [REDACTED] is a partnership, the Handbook, App. 16.4.3.2.2, says that the agency should use the IRS Schedule K-1 to determine income. Petitioner's Schedule K-1 shows her income to be \$7,567 for 2013, the same number shown on her 1040, Line 17. There is a "section 179" deduction shown on the K-1; a section 179 deduction is one for business use of property. Since it is not the type that has to be added back under MAGI rules, the \$7,567 should be used as petitioner's yearly income from the [REDACTED]. Similarly, the \$2,120 from [REDACTED] is based on the best evidence as petitioner's yearly income from that enterprise.

It is evident that petitioner's 2013 income should be the total of those two enterprises, that being \$9,687. That amount divided by twelve equals \$807.25 per month, putting petitioner below the monthly limit for BC+ eligibility.

CONCLUSIONS OF LAW

1. Petitioner provided all necessary verification of her income when she provided her 2013 income tax returns to the agency.
2. The agency erred by double counting petitioner's self-employment from her [REDACTED] by using yearly income divided by twelve as well as an estimate of the income paid to her weekly.
3. Petitioner's yearly income from her self-employment totaled \$9,687 as stated on her Schedule K-1 return and her 1040 return.
4. Petitioner's monthly income from that yearly amount was less than the income limit for BC+ eligibility.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to grant petitioner BC+ eligibility retroactive to December 1, 2014 with the finding that petitioner did not fail to verify information and that her monthly income was \$807.25. The agency shall take this action 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 9th day of March, 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 March 9, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability