



STATE OF WISCONSIN  
Division of Hearings and Appeals

---

In the Matter of

██████████  
██████████  
██████████

DECISION

BCS/163925

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 10, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on March 04, 2015, at Madison, Wisconsin.

The issue for determination is whether the respondent correctly terminated petitioner's BadgerCare enrollment.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████████  
██████████  
██████████

Respondent:

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

By: Bridget Bell

Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Dane County.
2. Petitioner receives FS as a household of one. Petitioner works for the ██████████ ██████████ as a substitute support staffer; she is paid \$11.25 per hour.

3. Petitioner submitted a Six Month Report Form (SMRF) on or about January 29, 2015. Following a review of that form and earned income verification, the county determined that the petitioner was not eligible for BadgerCare enrollment due to income exceeding program limits.
4. The county informed petitioner about the change by a notice dated February 2, 2015.

### 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 a one-person household is 100% of the Federal Poverty Limit, presently \$980.83. See Wis. Stat., §49.471(4)(a)4.b for the new law, and the BC+ Handbook, § 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 difficulty with determining income in petitioner's case is that she is a substitute support staff employee of a school district, and thus her income fluctuates widely. The BC+ Handbook, § 16.6, says that fluctuating income should be averaged over the period between payments. This non-specific policy guidance appears to support such an averaging in the present case; just as with a self-employed person, I find that the best way to estimate prospective income for a substitute school district staff member whose employment is limited to the school year is to look at the prior year's income.

I find that petitioner has established that her work as a substitute support staff person for a school district constitutes highly fluctuating income. The income determination by the respondent (see, Exhibit 12) does not provide an accurate assessment of petitioner's income. Determining a monthly average income based upon petitioner's annual income would provide the best evidence of petitioner's monthly earnings. The annual pay review would take into account vacation days built into the school district schedule, as well as days that petitioner does not work due to unavailability of jobs. I thus will order the county to re-determine petitioner's BadgerCare eligibility using monthly income based upon petitioner's annual gross earned income.

### CONCLUSIONS OF LAW

Petitioner's monthly earned income was overestimated; it should be estimated using a longer period of time because it fluctuates.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the ESC with instructions to re-determine petitioner's BadgerCare eligibility as of March 1, 2015, using a monthly average income based upon petitioner's annual income. The respondent shall take the 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 26th day of March, 2015

---

\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 26, 2015.

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