



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

BCS/165598

PRELIMINARY RECITALS

Pursuant to a petition filed April 21, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on May 12, 2015, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner's income exceeds the BadgerCare Plus limit.

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

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # Redact) is a resident of Eau Claire County.
2. The petitioner's household consists of him and his mother, who claims him on her federal income tax return.

3. The petitioner's mother is a self-employed newspaper deliverer. She reported \$19,802 in gross income and \$2,567 as business expenses on her 2014 federal income tax return, giving her net income of \$17,235, or \$1,436.25 per month. The deductible part of her self-employment income tax is \$1,218, or \$101.50 per month. The agency determined that her countable income is \$1,334.75 per month.
4. The petitioner's mother's job requires her to drive her own car approximately 50 miles a day. She works all except five or six days a year. She only declared \$47 in expenses related to her vehicle on her federal income tax return.
5. The petitioner's mother actually had \$494.75 in countable monthly income in 2014.
6. The federal poverty level for a two-person household is \$1,327.50 per month. *BadgerCare Plus Handbook*, § 50.1.

### DISCUSSION

BadgerCare Plus is Wisconsin's medical assistance program for those who are under 65 and not disabled. Adults are ineligible if their household income exceeds the federal poverty level. Wis. Stat. § 49.471(4)(a). The federal poverty level for a two-person household, the size of the petitioner's is \$1,327.50 per month. *BadgerCare Plus Handbook*, § 50.1. The county agency, using his mother's 2014 federal income tax return, determined that she earned \$1,334.75 per month from her self-employment as a newspaper deliverer. The petitioner has no income.

It is obvious from even a cursory review of the petitioner's mother's tax return reveals that she made a serious mistake to her detriment when preparing it. She testified that she drives approximately 50 miles every day of the year, except for a few major holidays, to deliver papers. This means that her business travel is around 18,000 miles a year. The federal government allowed persons to deduct \$.56 for each business-related mile traveled during 2014. <http://www.irs.gov/Tax-Professionals/Standard-Mileage-Rates>. Thus, if she did drive 18,000 miles to deliver newspapers, she could deduct \$10,080 from her income. But her tax return indicates that she only claimed \$47 in vehicle-related expenses. If the income used to determine her and the petitioner's BadgerCare Plus benefits had been \$87 lower in 2014, they would have met the program's \$1,327.50 limit. It is clear that if the petitioner's mother had prepared her income tax return correctly, her reported household income would have been well below the federal poverty level.

It has always been the goal of the department to use the best estimate of future income when determining a recipient's eligibility. See *BWI Operations Memo*, 97-113, October 31, 1997, p.3. The previous year's income tax return is used to determine future business income because what a person earned in the past often predicts what she will make in the future. For the petitioner's mother, what she earned last year is a good predictor of what she will earn this year: She testified that although her income fluctuates, overall, it is steady. But, because of her obvious error on her 2014 federal tax return, that return neither accurately states what she earned last year nor predicts what she will earn this year. Dividing the \$10,080 by 12 and subtracting it from the \$1,334.75 the agency determined her monthly income to be, reduces her monthly income to \$494.75 per month. Therefore, she and the petitioner remains eligible for BadgerCare Plus.

In making this decision, I am aware that reducing the petitioner's income will also reduce her deduction for self-employment taxes. I am also aware that the actual mileage she drove may be less than 18,000 a year. Each would lift her income over \$494.74 per month. Nevertheless, I have determined that amount is her countable income for two reasons. First, even if it were double this—and there is no doubt that it is not this high—it will still be below the federal poverty level, making her and the petitioner eligible for BadgerCare Plus. Second, the agency needs a definite figure to plug in so that she and the petitioner can be found eligible. Because any figure that does not exceed \$1,327.50 a month will accomplish this, as a practical matter it does not matter if this figure is somewhat inaccurate.

**CONCLUSIONS OF LAW**

The petitioner is eligible for BadgerCare Plus because his household income is less than the federal poverty level.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions to reinstate the petitioner into the BadgerCare Plus program retroactive to the date his benefits ended.

**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 13th day of May, 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 May 13, 2015.

Eau Claire County Department of Human Services  
Division of Health Care Access and Accountability