



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/166443

PRELIMINARY RECITALS

Pursuant to a petition filed June 5, 2015, 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 July 23, 2015, at Balsam Lake, Wisconsin.

The issue for determination is whether the county agency correctly determined the petitioner's income and determined that it exceeded the limit for BadgerCare Plus eligibility.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] Schuete
[REDACTED]
[REDACTED]

Respondent:

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

By: Miranda Lutz

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 # [REDACTED]) is a resident of Polk County. She lives with her husband and two children.
2. One of the petitioner's children is over 18 years old

3. The county agency notified the petitioner on May 14, 2015, that he and his wife and their older child were ineligible for BadgerCare Plus because their total income exceeded the program's limit.
4. The petitioner is not working.
5. The petitioner's husband owns a [REDACTED]. His income varies with the seasons. He earned \$22,478 from the business in 2014. His business is similar this year to what it was last year.
6. The petitioner's adult son earns \$929.50 per month.

DISCUSSION

BadgerCare Plus is Wisconsin's medical assistance program for those who are not elderly or disabled. Adults are ineligible if their household income exceeds the federal poverty level, which for a family of four—the size of the petitioner's—is \$2,020.83. Children under 19 are eligible until the household income exceeds 300% of the federal poverty level. Wis. Stat. § 49.471(4)(a); *BadgerCare Plus Handbook*, § 50.1.; *BadgerCare Plus Handbook*, § 50.1. The county agency denied BadgerCare Plus to the petitioner, her husband, and their adult child because their income exceeded the federal poverty level. A younger child was found eligible. The agency reached this figure by dividing the \$22,478 the petitioner's husband earned from his [REDACTED] by 12 and then adding the \$929.50 their oldest son earns each month.

The outcome of this matter depends upon whether the agency correctly determined the husband's self-employment income. The agency had allowed for a change of circumstances when his work stopped last winter and temporarily found the petitioner's entire family eligible. Later, it ended those benefits, contending that because her husband's comes from self-employment it should be averaged throughout the year. Agencies usually use the previous year's federal income tax return to determine self-employment income. But Wis. Admin. Code, § DHS 103.07(2)(a) allows an exception in the following circumstances:

If the latest income tax return does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business, the agency shall calculate the self-employment income based on anticipated earnings. Agencies shall determine whether it is necessary to use anticipated earnings on a case-by-case basis and shall document the reasons for the determination in the case record.

The *BadgerCare Plus Handbook*, § 16.4.3.2.1., instructs workers to use income tax returns if the following are all true:

1. The business was in operation at least one full month during the previous tax year, and
2. The business has been in operation six or more months at the time of the application, and
3. The person doesn't claim a change in circumstances since the previous year.

If all three conditions aren't met, use anticipated earnings.

The [REDACTED] was operating over a month in 2014 and it was operating more than six months when the petitioner applied for benefits. She did allege a change of circumstances, but this change was a change since the previous season and not the previous year, as the rules require. Based upon this, I find that the agency correctly used the 2014 federal income tax return to determine the income derived from the [REDACTED]. When that income—\$22,478—is divided by 12, it averages \$1,873.17 per month. Adding that to his adult son's \$929.50 monthly income gives 2,802.67. The agency deducted from this the petitioner's husband's self-employment tax, which averaged \$132.33 per month, giving a countable household income of \$2,670.34. Because this exceeds \$2,020.83, the federal poverty level for a four-person household, the adults in the petitioner's household are ineligible for BadgerCare Plus.

CONCLUSIONS OF LAW

1. The county agency correctly used the petitioner’s federal income tax return to determine her husband’s self-employment income.
2. The county agency correctly determined that the petitioner and the other two adults in her household are ineligible for BadgerCare Plus because their household income exceeds the federal poverty level.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

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 6th day of August, 2015

\sMichael D. O'Brien
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 6, 2015.

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