



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed June 05, 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 July 21, 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:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]

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 # [REDACTED]) is a resident of Eau Claire County.
2. The petitioner has two jobs with for the same employer. He does not work both jobs in the same week.

3. The petitioner earned \$5,320.80 between January 1, 2015, and July 20, 2015. He will receive one more paycheck in July for two weeks of work.
4. The county agency ended the petitioner's BadgerCare Plus benefits because his income exceeded the program's limit.

DISCUSSION

BadgerCare Plus is Wisconsin's medical assistance program for those who are not elderly or disabled. The county agency initially ended the petitioner's benefits as of April 20, 2015, because it contended he failed to adequately verify his income. It then determined that his income exceeded the program's limit, which is the federal poverty level, or \$980.83 for someone living alone. Wis. Stat. § 49.471(4)(a); *BadgerCare Plus Handbook*, § 50.1.

Medical assistance recipients must verify their income when they apply for benefits or renew their application. Wis. Admin. Code, § DHS 102.03(3)(a). The Wis. Admin. Code, § 102.03(1) sets forth the following basic rule concerning verification:

An application for MA shall be denied when the applicant or recipient is able to produce required verifications but refuses or fails to do so...If the applicant or recipient is not able to produce verifications, or requires assistance to do so, the agency may not deny assistance but shall proceed immediately to verify the data elements.

The agency requested that the petitioner verify his income. His employer sent in wage statements, but these indicated that he earned \$6 per hour, which is below the minimum wage, because they omitted his tips. Rather than ask for more information, the agency simply ended his benefits. This action was improper because the petitioner was not responsible for the inadequate verification; in fact, he knew nothing about it because the agency did not inform him.

The agency then determined that the petitioner's income exceeded the program's limit. When doing so it counted unemployment compensation, which he had not received since the spring of 2014, and assumed he was earning money at two jobs at the same time. The second assumption is understandable because his employer for both jobs sent the agency inadequate verification. The petitioner does have two jobs, but he only works at one of them at any given time. At the hearing, the worker noted that his total income varies somewhat from pay period to pay period but has been below the poverty level each quarter. He submitted wage stubs from the beginning of the year. Because the changes in his income have not been dramatic, this provides a fair estimate of what he can be expected to make in the future. From January 1, 2015, through July 20, 2015, he earned \$5,320.80. He will receive one more paycheck this month, so this represents approximately 6 ½ months. His \$5,320.80 income earned thus far this year divided by 6.5 gives him monthly income of \$818.58. Because this is less than the federal poverty level, he remains eligible for BadgerCare Plus.

CONCLUSIONS OF LAW

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

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it reinstate the petitioner into the BadgerCare Plus program retroactive to May 1, 2015.



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 22nd day of July, 2015

\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 July 22, 2015.

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