



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/168579

PRELIMINARY RECITALS

Pursuant to a petition filed September 08, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Green County Department of Human Services in regard to Medical Assistance, a hearing was held on November 10, 2015, at Monroe, Wisconsin.

The issue for determination is whether the agency erred in its denial of BC+ for petitioner and her child.

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: [Redacted]

Green County Department of Human Services
N3152 State Road 81
Monroe, WI 53566

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Green County.
2. Petitioner applied for BC+ for herself and her child.
3. Petitioner is married to [Redacted]. [Redacted] is a retired orthodontist. He had been self-employed. He renounced his U.S. citizenship in 2014. He claimed his wife and her child, [Redacted], as dependents in 2014. He claimed an adjusted gross income in 2014 of \$3,676,802.

4. The agency denied the BC+ applications as the BC test group was over the income limits for both individuals.
5. Petitioner appealed.

DISCUSSION

BadgerCare Plus is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents at or near the poverty line. An applicant must pass an income test. The income limit for adults went lower effective April 1, 2014: an eligible household of 2 adults and one child cannot have adjusted gross income exceeding 100% of the federal poverty level (FPL) for determining the adult's eligibility. Wis. Stat. § 49.45(23)(a); *BCPEH*, § 16.1. The 100% FPL amount is \$1,674.17 monthly for a household of three. *Id.*, § 50.1. As for the child's eligibility, the household's income cannot exceed 306% of the federal poverty level which is \$5,122.95. In this case, the household's monthly income is \$306,400.16 which is higher than the monthly income limit for both petitioner and her child.

The facts in this case are convoluted and atypical. Petitioner is married to [REDACTED] [REDACTED] is an orthodontist and claims he is retired. Notably, [REDACTED] did all the talking at hearing. Petitioner barely spoke. But, [REDACTED] explained that he is involved as an investor in a firm seeking a cure for cancer. Indeed, based on his tax return disclosures and a brief search on Google, [REDACTED] is a major shareholder (owner) of [REDACTED] [REDACTED] which is based in Los Angeles and bills itself on its website as a "biopharmaceutical research and development company specializing in oncology." The company is listed on the Nasdaq and has a market capitalization of \$186,000,000. In 2013, [REDACTED] purchased at least \$1,087,342 in stock of this company according to the New York Times financial page regarding insider trades of [REDACTED].

[REDACTED] explained that he renounced his U.S. citizenship in 2014 because he "no longer wished to be part of a country that keeps violating its own laws." Ironically though, he still seeks to reside in a country that provides his wife and child with free health care coverage. Under 26 U.S.C. §877A(a)(1) "All property of a covered expatriate shall be treated as sold on the day before the expatriation date for its fair market value." This rule resulted in capital gains for [REDACTED] in 2014 in the amount of \$3,602,383. [REDACTED] was certain to note that this is merely a "paper profit" as he continued to describe the family's hard times financially.

Based on 2014 tax return data, petitioner had capital gains in [REDACTED] as well as other securities. He also sold real estate including a home in Palm Beach, Florida. It is not clear to me whether he actually sold his Palm Beach home or if this is merely a "paper" transaction relating to the expatriation. It is possible that he still owns the Palm Beach home – though that is not relevant to the BC+ denial. Overall, the tax return reflects gross proceeds in [REDACTED] of \$18,107,658. Of this, a mere \$9,391,951 was noted as profit. Of course, this was offset by losses in other areas resulting in an adjusted gross income for the family in 2014 of only \$3,676,802.

[REDACTED] explained, however, that he does not expect a similar situation in 2015 or 2016. He explained that he has no income and his wife works to earn around \$30 a month playing piano at a church. He intends to survive the next year by liquidating savings and investments. A quick Google search also showed that the family's mailing address is a 5 bedroom, 5 bathroom, 5,546 square foot Victorian single-family home which was listed for sale in 2009 for nearly \$700,000.

[REDACTED] was quick to note that he is not the birth father of the child and, being a non-citizen does not understand why his finances should be taken into consideration regarding his wife and child. He also explained that for next year he the couple will be filing separate tax returns. But, this will not achieve the result [REDACTED] is hoping for. The answer lies in the rules of the BC+ program require the spouse to be

calculated as part of the BC test group regardless of the tax filing status. *BC+ Eligibility Handbook* § 2.3.2.1.

While 2015 income may turn out to be different, 2014 income was bizarre enough for me to believe that the 2014 tax return is the only reliable means of determining eligibility. ██████ has been a self-employed orthodontist for much of his life. His income is generated by capital gains from and liquidation of portions of investments seemingly in the millions of dollars. This cannot be verified by use of a state wage match. The only means of verifying income is tax returns from the relevant test group members. ██████ has no credibility in this matter given his expressly stated preference to use his money invest in his company rather than provide health insurance for his family. This is the clearest case I have ever had of a person trying to manipulate the state benefits system to his advantage. BC+ is a limited resource program. Many individuals who work at McDonald's full-time earn too much to enroll in this program. Yet ██████ can argue with a straight face that his wife and child are destitute because he occasionally sells some of his investments at a loss.

The Department calculated monthly gross income for this household based on 2014 tax return information. This was correct in this case as the tax return that was actually filed is the only reliable information in the record regarding petitioner's finances.

CONCLUSIONS OF LAW

1. The agency did not err in relying on the 2014 taxes as this was the best information available.
2. The agency did not err in the denial of BC+ eligibility.

THEREFORE, it is

ORDERED

That this 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 9th day of December, 2015

\sJohn P. Tedesco
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 December 9, 2015.

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