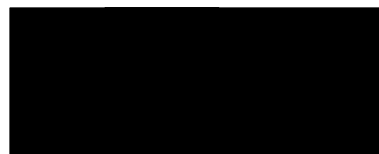




FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: BCS - 213610

PRELIMINARY RECITALS

Pursuant to a petition filed on June 1, 2024, under Wis. Stat. § 49.45(5)(a), to review a decision by the Waukesha County Health and Human Services regarding Medical Assistance (MA), a hearing was held on August 29, 2024, by telephone. An initial hearing was held on July 18, 2024. However, during that hearing, Petitioner's mother testified to a change in circumstances that affected the case. Both parties requested that a second hearing be set in order to allow Petitioner's mother to submit additional information to the agency as well as an opportunity for the agency to review that information. A second hearing was then held on August 29, 2024.

The issue for determination is whether the agency correctly determined that Petitioner is no longer eligible for BadgerCare Plus (BCP) effective June 1, 2024, unless she meets a \$40,034.94 deductible.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Nancy Garcia
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a child who resides with her family in Waukesha County and was enrolled in BCP.
2. On April 5, 2024, Petitioner's mother completed a renewal to continue receiving BCP benefits for her three children. Petitioner's mother noted on the renewal that she and her husband continued to be self-employed and the family's sole income is from their self-employment business.
3. The family's 2023 federal income tax form was submitted to the agency as verification of self-employment.
4. Petitioner's parents further submitted a self-employment income report form which detailed the businesses profits and losses from January 2024 through March 2024. During that three-month period, the family business had \$103,000 in profit and \$104,941 in losses.
5. In 2022, Petitioner's family's federal income tax forms note the family business had a total profit of \$35,318 for the year. In 2023, Petitioner's family's federal tax forms note the family business had a total profit of \$143,719. Petitioner's father testified during the hearing that the 2023 taxes show an inflated income that is not an accurate picture of the actual income for 2023. Petitioner's father noted that in December 2023, the business received a \$75,000 payment to cover a new project that was secured. However, that \$75,000 then immediately went to project expenses in January 2024 and February 2024. Had the payment been received in January 2024, the 2023 tax forms would have shown a more accurate income amount for the family that year.
6. On May 15, 2024, the agency sent a notice to Petitioner informing her that her BCP benefits would end on June 1, 2024, through November 30, 2024, because the household's income exceeded the income limits, but that if she met a \$40,034.94 deductible, she would qualify for BCP for the remaining period left during that 6-month time frame.
7. Petitioner's parents filed an appeal of the May 15, 2024, notice on Petitioner's behalf. During the hearing, Petitioner's mother noted that the 2023 Federal Income Tax Form should not have been used to determine the family's income due to special circumstances. In response, the agency representative asked Petitioner's mother to submit proof of 2024 business expenses. A second hearing was then set to allow Petitioner's mother to submit the requested verification as well as allow the agency representative time to review the documentation.
8. During the second hearing, the agency representative was asked if she had time to review the verification submitted by Petitioner's mother. The agency representative responded, "Yes, Judge." The agency representative was asked if the requested verification had changed the agency's determination regarding the BCP coverage. The agency representative responded that it had not. She was asked to elaborate. The agency representative explained that Petitioner's self-employment income form noted suspicious large expenses for "legal and professional" fees that did not match the receipts Petitioner's mother submitted. Further, those expenses were significantly more than in previous years. The agency representative was specifically asked if that was the only issue with the Self-Employment Report Form that was suspicious to her. She replied that it was.
9. During the hearing, upon review of the Self-Income Report Form, Petitioner's parents testified that they had accidentally entered the taxes they paid into the "legal and professional" fee section

of the Self-Income Report Form. Specifically, the \$26,933.00 noted for February 2024 legal and professional fees is what they paid for 2023 taxes in that same month.

10. Noting the clerical mistake, the agency representative was asked if this then changed the agency's determination, since the "suspicious" legal and professional fees were actually taxes the family had paid but had been accidentally entered in the wrong field. The agency representative responded that this clerical mistake changed nothing because the income "was still over the income limit." The agency representative was asked what evidence she was basing that determination on. The agency representative responded that her sole basis for determining that the household income was over the income limit was the Self-Income Report Form. She noted that the income still exceeded the income limit. Upon review of that document, the calculations indicate a loss for 2024. The agency representative was asked how she was finding any profit when the math indicated only loss. The agency representative then reiterated the suspicious "legal and professional fees." Again, the agency representative was informed that that had already been resolved as a clerical error and those were actually tax amounts the household paid. The agency representative then insisted that the family income was still over the income limit because, "Even if we subtract the tax amount, they still have an income of over \$76,000." The agency representative was then asked multiple times to explain exactly how she was finding an income of \$76,000 for 2024 based solely on the Self-Income Report Form when that form's calculations indicated only losses in 2024. The agency representative failed to answer that question but rather responded by discussing topics she was not asked about, including that the agency isn't trying to remove BCP from these children but that she has to be able to answer for her determinations, that this is "ebb and flow" in business, and that when a person is self-employed, "you win some and you lose some and that's just how it is."

DISCUSSION

BadgerCare Plus (BCP) is Wisconsin's medical assistance program for those who are not elderly or disabled Wis. Stat. § 49.471. The income limit for an adult 19 to 64 years old is 100% of the Federal Poverty Level (FPL). The income limit for a child under 19 is 306% of the FPL. See Wis. Stat., § 49.471(4)(a) and BCP Handbook, §§ 16.1.1, 19.1 and 50.1.

The agency sent a notice to Petitioner informing her that her household monthly counted income was determined to be \$11,244.99. The counted income limit for the family is \$5,822.31. Therefore, the agency determined that the family was no longer eligible for BCP because the counted monthly income exceeded the income limit. The agency noted Petitioner, as a child, would be eligible for BCP if she met a \$40,034.94 deductible between the period of June 1, 2024, through November 30, 2024. The BCP would only be for the period of time after she met the deductible during that 6-month period. BCP Handbook § 17.1.

The agency had used Petitioner's family's 2023 IRS Income Tax Form to calculate that income. Per BCP Handbook rules, the agency can calculate BCP income by using either IRS tax forms or through anticipated earnings. BCP Handbook § 16.4.3.4. However, agency workers are instructed to only consult IRS tax forms if all of the following conditions are met:

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

If all three conditions are not met, *the agency is required to use anticipated earnings*. BCP Handbook § 16.4.3.4.1. Emphasis added.

In this case, the family business has been in operation for at least one full month during the previous tax year and the business has been in operation six or more months. However, Petitioner's parents did claim a change in circumstances since the previous year.

The BCP Handbook explicitly states, "If past circumstances do not represent present circumstances, workers should calculate self-employment income based on anticipated earnings." Petitioner's parents credibly argued during the hearing that the \$75,000 their business received in December 2023 as an advance payment on a project does not represent present circumstances.

Further, the BCP Handbook notes that anticipated earnings should be used when the "member's business underwent a significant change in circumstances. *A significant change in circumstances is any change that can be expected to affect income over time.*" BCP Handbook § 16.4.3.4.3. Emphasis added. The BCP Handbook then details certain examples to further explain the types of change that would be considered significant. Of note, these are merely examples and the BCP Handbook does not state that significant change is defined only by the examples given. The BCP Handbook is explicitly clear that while some examples were given, any change that is expected to affect income over time is significant.

Petitioner's parents credibly testified regarding the inflated 2023 profit amount due to one \$75,000 payment they received in December 2023 as an advance on a project for early 2024. The Self-Employment Income Report Form details that that money has already been spent for that project. Further, the family business is operating at a loss for 2024. That is an accurate reflection of the family's current financial situation, which remained accurate at the time of hearing in August 2024.

The BCP Handbook clearly directs the agency to use anticipated earnings in this situation and not their 2023 IRS Tax Form. Since the agency determined a household monthly income in 2024 that affected BCP benefits, it is the agency's burden to establish that such an income exists.

The agency representative was specifically asked how she was calculating any income. The agency representative noted that the sole document she was basing that determination on was the Self-Employment Income Form. At first, she testified that she found the legal and professional fees listed to be suspicious as they were significantly more than previous years and Petitioner did not provide verification of those expenses. The agency representative was correct to question those amounts. However, during the hearing, Petitioner's parents credibly explained that the income taxes they paid were listed under legal and professional fees by accident. This was a clerical error. When the legal and professional fee losses were moved to the correct category of taxes, the Self-Employment Report Form clearly calculates a loss for Petitioner's family for 2024. Specifically, between January 2024 through March 2024, the family business had \$103,000 in profits and \$104,941 in losses. If the only evidence the agency was relying on to establish an income for the family was that form, then the form only establishes zero income.

Ultimately, it was the agency's burden to establish that Petitioner's household income exceeded the income limit, requiring a deductible to be met. The agency presented no evidence to establish that Petitioner had any income in 2024. The agency representative was given multiple opportunities to explain how she was establishing any income for this family and rather than answer that question, she instead responded about other topics. Therefore, the agency did not meet their burden to establish that Petitioner's family's counted monthly income exceeds the income limit for BCP benefits.

CONCLUSIONS OF LAW

The agency did not meet their burden in establishing that Petitioner's household income exceeds the income limit for eligibility and requires a deductible.

THEREFORE, it is

ORDERED

That within 10 days of the date of this decision, the agency rescinds the May 15, 2024, notice terminating Petitioner's BCP and requiring a deductible, and issues a new notice approving BCP benefits effective June 1, 2024.

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, 4822 Madison Yards Way, 5th Floor North, 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.

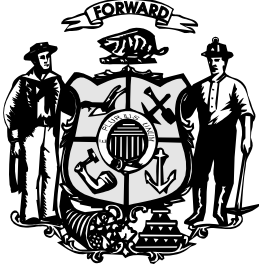
APPEAL TO COURT

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, **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 Milwaukee,
Wisconsin, this 23rd day of September, 2024

\s _____
Nicole Bjork
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 September 23, 2024.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability