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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: BCS - 200619

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on November 27, 2020, under Wis. Stat. § 49.45(5)(a), to review a decision by the Pierce County Department of Human Services regarding Medical Assistance (MA), a hearing was held on January 5, 2021, by telephone.

The issue for determination is whether the petitioner's children were eligible for BadgerCare Plus in August 2020.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: [REDACTED]  
Pierce County Department of Human Services  
412 West Kinne Street  
PO Box 670  
Ellsworth, WI 54011

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Burnett County.

2. On August 11, 2020, the petitioner applied for BadgerCare Plus for herself, her two children, and ██████, the children's father.
3. On August 14, 2020, the department requested verification of ██████'s self-employment income. The petitioner provided Schedule C of his 2019 federal income tax return to the department on September 4, 2020. On September 10, 2020, the department denied benefits to the children because his income was too high.
4. On September 22, 2020, the petitioner reported that ██████'s income fell significantly from March through August 2020 because they had moved from Alaska to Wisconsin and the new location and the pandemic limited his income as a tile contractor. The petitioner verified his current income on October 16, 2020, the deadline it set for her, and the department found the children eligible retroactive to September 1, 2020.
5. The income used to determine the children's benefits was the same in August and September 2020.
6. The petitioner seeks benefits for her children retroactive to August 1, 2020.

### DISCUSSION

BadgerCare Plus is Wisconsin's medical assistance program for those who are not elderly or disabled Wis. Stat. § 49.471. Adults are eligible if their household's countable income does not exceed the federal poverty level. Children are eligible if that income does not exceed 306% of the federal poverty level. Wis. Stat. §§ 49.471(4)(a); *BadgerCare Plus Handbook*, §§ 16.1.1. and 19.1.

The department found the petitioner's children ineligible on September 10, 2020, because their father, ██████, had income that was too high. It based its decision on ██████'s 2019 federal income tax return. ██████ is a tile contractor who, along with the petitioner their children, recently moved to Wisconsin from Alaska. The new location combined with the pandemic caused his income to fall considerably. On September 22, 2020, the petitioner reported this to the agency and verified the income on October 16, 2020, the deadline set for her. The department found her children eligible retroactive to September 1, 2020. She requests that eligibility begin on August 1, 2020.

No one disputes that ██████'s self-employment income and any other income used to determine the children's eligibility was no higher in August than in September. But the department contends that because it had already confirmed that the children were not eligible in August, it could not find them eligible until the month the petitioner reported change, which was September. It relies on the following policy found at *BadgerCare Handbook*, § 27.1:

For applications, changes that occur between the filing date and confirmation date must be reported and considered in the eligibility determination. Changes that are reported after certification must be acted on in the same manner as any other reported change.

This provision is somewhat vague in relation to the petitioner's case because ██████'s income did not change between when the petitioner applied and when the department determined her application. But the department has to base its decision on the information it has when it makes its decision, and that information indicated that her children were not eligible. It was the new information it received after it made the decision that caused it to find the children eligible. However, because that change was not reported until September, the department could not find her eligible until that month.

But that does not resolve the matter. The question is not just what evidence the department had concerning ██████'s income when it determined the children's eligibility, but what evidence it *should*

have had. The evidence it had depends on what it asked for. The department's goal has always been 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. Although agencies usually depend upon the previous year's tax return to determine future self-employment income, there are exceptions if those returns do not accurately reflect the current circumstances. Thus, Wis. Admin. Code, § DHS 103.07(2)(a), states the following about using tax returns to determine self-employment income:

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 Handbook*, § 16.4.3.1., instructs workers to use tax returns only if, among other things, the "person does not claim a change in circumstances since the previous year."

The petitioner must prove that her children are eligible for BadgerCare Plus by the preponderance of the evidence. This is a fairly low burden of proof that requires only that she prove that it is more likely than not that they are eligible. Because her case depends solely upon whether the department requested the correct information to verify ██████'s current income, she must prove that it is more likely than not that it should have asked her something other than his 2019 tax return to verify that income.

The petitioner spoke with agency representatives a number of times while her case was pending. It is unclear if she ever specifically mentioned that her family had recently moved from Alaska, which was a clear change of circumstances. But by August, when she applied, the pandemic was affecting most small businesspersons. As an applicant, unless a worker told her, the petitioner would not know the relevance of the income information she provided and that she should assert that ██████'s circumstances had changed so that she could submit alternative proof of his income. I understand why an agency worker would overlook asking her about this if she did not volunteer that information. Nevertheless, given the obvious affect the pandemic was having on small businesses—and especially those that involve person-to-person contact like tiling does—it is something that should have been asked. Because the petitioner's children would have been eligible in August 2020 if the department had requested that ██████ use more current information to verify his income, I find by the preponderance of the evidence that their eligibility should begin then.

### CONCLUSIONS OF LAW

The petitioner's children are eligible for BadgerCare Plus beginning in August 2020 because their household income was within the program's limit that month.

**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 take all steps necessary to find the petitioner's children eligible for BadgerCare Plus retroactive to August 2020. Their eligibility shall be under the same conditions as they were eligible in September 2020.

**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, 5<sup>th</sup> 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.

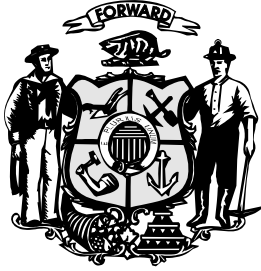
## **APPEAL TO COURT**

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 Madison,  
Wisconsin, this 8th day of January, 2021

\s \_\_\_\_\_  
Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
5<sup>th</sup> Floor North  
4822 Madison Yards Way  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 8, 2021.

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