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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 #: MAP - 216062

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on November 26, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Waukesha County Health and Human Services regarding Medical Assistance (MA), a hearing was held on January 9, 2025, by telephone. The hearing also addressed Petitioner's companion appeal relating to BadgerCare Plus (BCS-216318). A separate decision will be issued for that appeal.

The issue for determination is whether the agency correctly denied Petitioner's enrollment in the Medicaid Purchase Plan program.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

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:**

Wendy I. Smith

Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 28-year-old resident of Waukesha County who receives Medical Assistance through the BadgerCare Plus program and who also sought enrollment in the Medicaid Purchase Plan (MAPP) program.
2. Petitioner submitted an Elderly, Blind, or Disabled Medicaid (EBD Medicaid) application to the agency in fax transmissions dated July 17, 2024, and July 22, 2024. Petitioner reported that he has not been determined blind or disabled by the Social Security Administration and has not received Supplemental Security Income in the past. He requested a Disability Application Form.
  - a. Petitioner's application lists the following assets in a [REDACTED] checking account (\$1,281.12), [REDACTED] savings account (\$10.00), and [REDACTED] brokerage account (\$12,729.11).
  - b. Petitioner reported that he is employed by the [REDACTED] at a rate of \$10.00 per hour (paid monthly) with a gross monthly earning of \$10.00 for the present month and expected gross monthly earnings of \$147.50 for the following month.
  - c. Petitioner also reported self-employment in his personal capacity in information technology consulting for 30 hours per month. He claims he does not have an incorporated business and does not file business taxes. Reported income received totals \$600.00 per month with \$50.00 in expenses.
  - d. Petitioner lists \$4.73 per month in interest/dividends from his brokerage account and \$0.01 per month in [REDACTED] accrued interest.
  - e. Petitioner reports \$10.00 per month in out-of-pocket medical expenses.

### *Petitioner's Exhibit 3.*

3. On or about September 14, 2024, Petitioner completed a renewal for his existing BadgerCare Plus enrollment. Petitioner reported limited self-employment in the amount of 4 hours per month (\$100.92 per month) doing odd jobs. A summary of his renewal indicates that he reported no employment or other sources of income. The summary includes a Renewal Signature Page which permits the enrollee to make changes to information included in the summary. *Petitioner's Exhibit 1.*
4. On October 8, 2024, the agency received a Renewal Signature Page signed by Petitioner with handwritten notes making changes to his renewal summary, including but not limited to:
  - a. **Absent Parent Information** – Petitioner requested removal of an absentee parent (“[REDACTED]”) as the information is incorrect;
  - b. **Disability Summary** – Petitioner noted that Petitioner is not unable to work, as indicated in the summary, but “able to work only very limited, intermittent, part-time hours occasionally;”
  - c. **Disability Summary** – Petitioner requested change to the question “Determined disabled?” from “No” to “Pending Determination;”

- d. **Job Income Information** – Petitioner requested change to information that stated, “You told us no one in your home has a job.” Petitioner added extensive handwritten notes indicating that he has fluctuating income from employment and self-employment during 2024:

One-Time Legal Settlement	\$1,500.00
One-Time Prize/Award	\$400
Part-Time [REDACTED]	\$182.50 total to date
Self-Employment	\$3,350.00 total to date
Employment at [REDACTED]	\$1,290.60 total to date
<b>Total Income to date in 2024:</b>	<b>\$6,723.10</b>

Petitioner asserts in the Renewal Signature Page that his income fluctuates due to seasonal work availability and ongoing health issues. He also requested that his BadgerCare Plus eligibility be tested on Annual Income limits due to this fluctuation. *Petitioner’s Exhibit 4.*

5. On or about October 8, 2024, Petitioner submitted a Medicaid Disability Application (MADA) with asserted disabilities of functional neurological disorder, movement disorder, autonomic neuropathy, and other conditions. The application states that his disability first prevented him from working on October 1, 2009. The application also reported that Petitioner was then currently working as the President of [REDACTED], as of August 1, 2024, for 0-15 hours per week at a rate of \$20.00 per hour. *Petitioner’s Exhibit 5.*
6. As of the date of his initial EBD Medicaid application and MADA, Petitioner was not elderly. As of the date of his initial EBD Medicaid application and MADA, Petitioner had not yet been determined to be blind, disabled, or presumptively disabled by the DDB. *Petitioner’s Exhibits 3, 5.*
7. As of the date of his initial EBD Medicaid application, Petitioner had not been found disabled by the Social Security Administration. According to Petitioner’s MADA, Petitioner previously applied for Social Security Disability or Supplemental Security Income benefits on August 3, 2021, and his claim was denied. *Petitioner’s Exhibit 5.*
8. In a notice dated November 4, 2024, the agency requested that Petitioner provide proof documents in support of his application for MAPP with a due date of November 25, 2024. The agency requested proof of his employment or self-employment, of a [REDACTED] brokerage account, of [REDACTED] checking and savings accounts, and of monthly income and expenses for [REDACTED]. For his employment or self-employment, Petitioner was advised that a signed statement about employment would suffice. For the monthly income and expenses of [REDACTED], Petitioner was advised that a Self-Employment Income Report form or bookkeeping records would suffice. *Petitioner’s Exhibit 1.*
9. The agency received proof documents verifying Petitioner’s assets in his financial accounts. The agency received an [REDACTED] paystub for the month of August 2024 showing gross earnings of \$1,290.60.
10. In a notice dated November 8, 2024, the agency confirmed that as of that date it still required proof documents for Petitioner’s monthly income and expenses for [REDACTED], with a due date still November 25, 2024. *Petitioner’s Exhibit 1.*
11. On November 22, 2024, Petitioner submitted to the agency a typed letter in which he objected to responding to the request for proof documents for his alleged self-employment at [REDACTED].

Petitioner claimed that he is simply employed by [REDACTED], no longer self-employed, and his current documentation provided to the agency ([REDACTED] paystub, W-4, and I-9) should be sufficient. The letter states “I do not receive any self-employment income from this source nor do I earn income directly from the business; I only receive employee compensation as an employee of [REDACTED]. ... [REDACTED] is a separate legal entity with its own financial accounts and separate taxation as an S-Corporation since its incorporation. [REDACTED]’s income and expenses do not appear on my own financial statements or taxes.” *Petitioner’s Exhibit 2.*

12. On or about November 25, 2024, the agency processed another [REDACTED] paystub for the month of September 2024 showing gross earnings of \$240.00.
13. On November 26, 2024, Petitioner again wrote to the agency to identify inaccurate information in his case file that has not yet been corrected by the agency. He also claims that the agency has two [REDACTED] paystubs and he cannot provide self-employment documentation as he is no longer self-employed. *Petitioner’s Exhibit 2.*
14. In a notice dated November 26, 2024, the agency denied Petitioner’s enrollment in Medicaid and MAPP for failing to submit required proof documents. The notice stated that it did not receive proof of Petitioner’s monthly income and expenses for “COMPUTER SERVICES – [REDACTED].” The Medicaid portion of the denial also stated that Petitioner had assets over the program limit. Per the notice, Petitioner’s verified assets did not exceed the asset limit for the MAPP program. Per the notice, Petitioner’s *unverified* income did not exceed the MAPP income limit. *Petitioner’s Exhibit 1.*
15. Petitioner is the sole member and 100% owner of the business [REDACTED]. [REDACTED] is registered with the State of Wisconsin as a Domestic Limited Liability Company, effective as of July 31, 2024. *Petitioner’s Exhibit 7.*
16. Prior to July 31, 2024, Petitioner earned income through self-employment performing information technology consulting. Petitioner “formalized his business” by creating the business entity [REDACTED] with the State of Wisconsin and electing S-Corp tax status for the business. *Petitioner’s Exhibit 4.*
17. Petitioner completed I-9 and W-4 forms to become an employee of [REDACTED] as of August 1, 2024. Petitioner’s I-9 indicates that Petitioner is the proposed employee of [REDACTED] and the form is also signed by Petitioner as the Employer and President of [REDACTED]. *Petitioner’s Exhibit 7.*
18. Petitioner received paychecks from [REDACTED] for the following months of employment: August 2024 (\$1,290.00 gross), September 2024 (\$240.00 gross), October 2024 (\$20.00 gross), and November 2024 (\$356.11 gross). Petitioner received a W-2 for the year 2024 for his purported employment at [REDACTED]. *Petitioner’s Exhibit 6.*
19. Petitioner claims that he does not receive any other type of income from [REDACTED] and that he does not receive any income directly from the operation of the business. Petitioner claims there was no other revenue generated by [REDACTED] in 2024 beyond his reported wages. *Petitioner’s Exhibit 2; Petitioner’s Testimony.*
20. As President of [REDACTED], Petitioner does not have a supervisor or manager that controls or directs the methods of his work at [REDACTED]. Petitioner controls his own work. *Petitioner’s Testimony.*

21. As of the date of the hearing, a federal tax return had not yet been filed for [REDACTED] for 2024. Because [REDACTED] did not exist prior to 2024, there are no other relevant tax returns. *Petitioner's Testimony*.
22. Petitioner now appeals his denial in the MAPP program to the Division of Hearings and Appeals.
23. At the hearing on this matter, the agency's representative asserted that the reason Petitioner was denied eligibility in MAPP was because he was not deemed disabled and therefore not non-financially eligible.

## DISCUSSION

### MAPP Eligibility & Verification of Information

The appeal in this matter is for a denial of eligibility issued to Petitioner on the basis that he did not provide required proof documents, as stated in the notice dated November 26, 2024. At the hearing, however, the agency's representative asserted that the reason he was denied was because he was not disabled. However, this was not noticed as the reason for his denial. The agency is required to issue a notice with a reason for an adverse action, such as denial of eligibility. 42 C.F.R. § 435.917(b)(2); 42 C.F.R. § 431.210. I will proceed with review of this matter based on the noticed reason for denial.

The Medicaid Purchase Plan (MAPP) program allows disabled individuals who are working or who want to work to remain Medicaid eligible, even if employed, as the program has higher income limits than other Medicaid programs. *See* Wis. Stat. § 49.472; *Wisconsin Medicaid Eligibility Handbook (Medicaid Handbook)* § 26.1. To be eligible for MAPP, an individual must (1) be a disabled adult, (2) meet all nonfinancial Medicaid requirements, (3) satisfy the MAPP work requirement, unless exempt, and (4) pay any required premium payments, unless exempt. Wis. Stat. § 49.472(3); *Medicaid Handbook* § 26.3.1.

As to the MAPP disability requirement, the Disability Determination Bureau (DDB) must find the individual disabled, presumptively disabled while a final disability determination is pending, or "MAPP-disabled." *Medicaid Handbook* § 26.3.1. The DDB attempts to make a disability determination within 90 days of the date it receives the signed MADA. *Id.* at § 5.4.1.

While the agency awaits a determination by the DDB, the MAPP application will remain pending unless the agency finds that the applicant is otherwise ineligible for the program.

Besides determination of disability, an applicant must satisfy the other eligibility criteria for the MAPP program, including financial eligibility. *Id.* at § 26.4. The asset limit for a group size of one under the MAPP program is \$15,000.00. *Id.* at § 39.4.1; Wis. Admin. Code DHS § 103.04(8). The monthly income limit for a group size of one is less than 250% of the Federal Poverty Level (FPL). *Medicaid Handbook* at § 39.4.1; Wis. Admin. Code DHS § 103.04(8). At the time of Petitioner's denial, 250% FPL for a group size of one was \$3,137.50. *Medicaid Handbook* at § 39.5.

An applicant is required to verify information that can affect eligibility, such as applicant's income and assets. Wis. Admin. Code DHS § 102.03. If the applicant fails to verify information necessary for determination of eligibility by the time limit, the applicant shall be denied eligibility. Wis. Admin. Code DHS § 102.02.

Classification of Petitioner's Income from [REDACTED]

The initial question in this matter is whether Petitioner's income from his work at [REDACTED] should be considered employment or self-employment.

Petitioner previously reported to the agency that he earned income from self-employment. In his BadgerCare Plus renewal, Petitioner advised the agency that he had "formalized" his business. Petitioner is now the sole member, 100% owner, and President of the business [REDACTED]. [REDACTED] is registered as a Domestic Limited Liability Company in the State of Wisconsin, effective as of July 31, 2024. [REDACTED] is registered with S-Corp filing status with the IRS.

Petitioner completed I-9 and W-4 forms to become an employee of [REDACTED] as of August 1, 2024. Petitioner's I-9 indicates that Petitioner is the proposed employee of [REDACTED] and the form is also signed by Petitioner as the Employer and President of [REDACTED]. Petitioner received paychecks from [REDACTED] for the following months of employment: August 2024 (\$1,290.00 gross), September 2024 (\$240.00 gross), October 2024 (\$20.00 gross), and November 2024 (\$356.11 gross). Petitioner received a W-2 for the year 2024 for his purported employment at [REDACTED]. According to Petitioner, he has not yet filed a federal tax return for the business for the year 2024.

Petitioner claims that he does not receive any other type of income from [REDACTED] but for the paychecks and that he does not receive any income directly from the operation of the business. Petitioner claims there was no other revenue generated by [REDACTED] in 2024 beyond his reported wages.

Per Petitioner's testimony, as President of [REDACTED], Petitioner does not have a supervisor or manager that controls or directs the methods of his work at [REDACTED]. Petitioner controls his own work.

I will note here that Petitioner testified at the hearing that he does not consider the formalization of his business to be a meaningful change in his circumstances. He claimed that he was doing the same type of work prior to and after he formalized his business and became an alleged employee.

Petitioner argues that because he completed the formalities to organize his business, registration for IRS tax reporting, completion of an I-9 and W-4, and receipt of paychecks from [REDACTED], he should be considered an employee of [REDACTED] and should only be required to produce verification as would any other employee, such as through production of recent paychecks. He objects to completion of a Self-Employment Income Report form or production of business records.

For the purposes of MAPP eligibility, earned income is defined as an applicant's wages and/or net earnings from self-employment. Wis. Stat. § 49.472(1)(a); 42 U.S.C. § 1382a(a)(1). The *Medicaid Eligibility Handbook (Medicaid Handbook)*, Section 15.6.2.3, provides the following agency guidance to Income Maintenance representatives on how to determine employee status:

A person is an employee if he or she is under the direct "wield and control" of an employer. The employer has the right to control the method and result of the employee's service. A self-employed person earns income directly from his or her own business, and all of the following applies:

1. Does not have federal income tax and FICA payments withheld from a paycheck.
2. Does not complete a W-4 for an employer.
3. Is not covered by employer liability insurance or worker's compensation.
4. Is responsible for his or her own work schedule.

Self-employment is not strictly limited to sole proprietorships. The *Medicaid Handbook* directs agency workers to assess varying business types for self-employment. See *Medicaid Handbook* § 15.6.2.1. Workers may assess tax forms for identifying self-employment, including those for LLCs and S-Corps. *Id.* at § 15.6.2.2.

I note that the guidance provided in the *Medicaid Handbook* is not binding legal authority. It is created by the agency in consultation with relevant law for the purpose of assisting its workers. This case is an example of a scenario that is not exactly addressed by the *Handbook*.

Petitioner has taken steps to create the paperwork that gives the appearance of employment. But paperwork alone does not transform self-employment into employment. The critical distinction between the two classifications is the aforementioned “wield and control.” See e.g., *Lamoreux v. Oreck*, 2004 WI App 160, ¶ 19, 275 Wis. 2d 801, 813–14, 686 N.W.2d 722, 728 (citing the dominant factor of employment as conduct subject to another’s control or right to control). The terms of an employee’s work are established by the employer, the work is directed by the employer, and the employee does not have power and authority to control the employer business. That is not the case here. Petitioner is the sole member and 100% owner of [REDACTED]. No other person controls his work. He controls his own work schedule. No other person would have the authority to manage the business, including access to business funds and records.

As a policy, Petitioner’s argued interpretation could allow applicants to shield information about income and assets required to be assessed for the purposes of eligibility as long as the Medical Assistance applicant was willing to complete the paperwork to be paid paychecks. I do not think Petitioner is attempting to hide income or assets in this case; in fact, he has been quite transparent. However, Petitioner’s interpretation may result in an opportunity for applicants to conceal information that is necessary for the agency to determine eligibility.

Based on the record before me, Petitioner’s work with [REDACTED] should be considered self-employment as Petitioner is not under the wield or control of an employer and is only under the control of himself as sole member, 100% owner, and President of the business.

#### Verification of Information

The next question is whether the agency was within its authority to deny Petitioner’s MAPP application based on failure to provide adequate proof documents for verification of his income and assets.

Upon being informed of a change in Petitioner’s employment or self-employment status and corresponding income, the agency was within its authority to verify that information. Wis. Admin. Code DHS § 102.03. The agency did so in the notice dated November 4, 2024 (with a reminder notice issued on November 8, 2024). Based on the record before me, it appears that Petitioner supplied the agency with at least two months of paystubs from his alleged employment at [REDACTED], a written statement about his income in the Renewal Signature Page, and a written statement dated November in which he stated the following:

“I do not receive any self-employment income from this source nor do I earn income directly from the business; I only receive employee compensation as an employee of [REDACTED]. ... [REDACTED] is a separate legal entity with its own financial accounts and separate taxation as an S-Corporation since its incorporation. [REDACTED]’s income and expenses do not appear on my own financial statements or taxes.”

Petitioner did not supply a 2024 tax return for [REDACTED] as that has not yet been filed. [REDACTED] was not in existence to file a return in any prior year. Petitioner has not submitted a Self-Employment Income Report or other business bookkeeping records.

Petitioner then received a notice of denial dated November 26, 2024, for both Medicaid and MAPP programs. As it relates to this appeal regarding MAPP, Petitioner's MAPP enrollment was denied for failing to complete needed action or send in proof documents. Specifically, the notice claims that Petitioner did not provide proof of his monthly income and expenses for his computer services work at [REDACTED].

*Medicaid Handbook* Section 20.8.1 provides that *positive* action on an application is warranted when the applicant timely provides all requested verification and is otherwise eligible, or the requested verification is mandatory but the applicant does not have the power to produce verification and is otherwise eligible.

Conversely, the agency shall take *negative* action by denying or reducing benefits when all of the following are true:

- The applicant or member has the power to produce the verification.
- The time allowed to produce the verification has passed.
- The applicant or member has been given adequate notice of the verification required.
- The requested verification is needed to determine current eligibility. Current eligibility cannot be denied for lack of verification of a past circumstance that does not affect current eligibility.
- The member is not a child in a continuous coverage period (see Section 1.2 Continuous Coverage for Qualifying Children).

*Medicaid Handbook* § 20.8.3.

Generally, the agency is prohibited from requiring excessive pieces of evidence or requesting verification that is not needed to determine eligibility. *Id.* at § 20.1.4. Once information has been verified, an individual does not need to verify it again unless (1) there is reason to believe that the information is fraudulent or differs from more recent information, (2) the member reports a change in information that is subject to mandatory verification, or (3) at renewal, information is subject to mandatory verification rules or is questionable. *Id.* One particular type of verification may not be exclusively required when various types are adequate and available. *Id.*

In this case, it appears that Petitioner supplied satisfactory written assurances about the fact that his business only generates revenue as evidenced in the paychecks paid to himself and he does not appear to claim any expenses or deductions. While Petitioner did not supply tax returns, he cannot be required to produce documents that do not exist. Further, the agency may not require only one form of verification – such as a Self-Employment Income Report form – to the exclusion of other adequate sources of information.

Here, Petitioner has been clear that no other income or assets exist for his company. This appears to be sufficient, or “best available,” information for the agency to make a financial eligibility determination using the information already produced. The verification requested was excessive. As such, I remand this case back to the agency to reopen Petitioner's MAPP application for redetermination, as directed below.



Incorrect Case Information

Petitioner also asserts that the agency still has incorrect information on file for him that he has tried to have corrected. For example, the agency had Petitioner's mother listed as an absent parent of Petitioner's nonexistent children. This resulted in certain notices about seeking child support from that person which were inapplicable to Petitioner. This must have been confusing to Petitioner. However, my jurisdiction of review does not extend to every complaint asserted by a petitioner against an agency.

DHA's authority to review agency actions is set forth under Wis. Admin. Code HA Chapters 1 through 3. As it relates to this case, the DHA has jurisdiction to review denial, termination or reduction of medical assistance benefits. *See* Wis. Adm. Code HA § 3.03(1). Petitioner has not produced evidence that the complained inaccuracies that have not yet been corrected were material to his original denial. To the extent to which Petitioner's denial resulted from confusion about Petitioner's income, the agency is ordered below to redetermine Petitioner's eligibility based on the information provided as of the date of this decision.

I do not have the authority to order the agency to correct Petitioner's file information, but at the hearing, the agency's representative was willing to coordinate Petitioner meeting with an agency supervisor to make corrections. Petitioner is advised to follow up on that offer.

**CONCLUSIONS OF LAW**

1. Petitioner's reported work for [REDACTED], is self-employment as Petitioner is not under the wield or control of an employer and is only under the control of himself as sole member, 100% owner, and President of the business.
2. The agency erred in denying Petitioner's MAPP application for failure to provide income and expense verification for [REDACTED], as Petitioner had supplied written documentation to the agency that is sufficient to verify his financial eligibility.

**THEREFORE, it is**

**ORDERED**

That the case is remanded to the agency to (1) reopen Petitioner's MAPP application as of the date of his original EBD Medicaid application, (2) reconsider the proof documents already supplied by Petitioner to the agency as of the date of this decision, and (3) redetermine Petitioner's financial eligibility for MAPP based on that information. If Petitioner is found to be financially ineligible, the agency shall issue a written notice of determination with a right of appeal. If Petitioner is found to be financially eligible, the agency shall continue to process Petitioner's application in accordance with its standard operating procedures. The agency shall complete a financial eligibility determination within 10 days of the date of this decision.

**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.

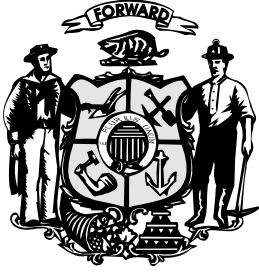
## APPEAL TO COURT

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 Milwaukee,  
Wisconsin, this 4th day of February, 2025

\s \_\_\_\_\_  
Wendy I. Smith  
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 February 4, 2025.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability  
[REDACTED]