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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 - 174716

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on May 31, 2016, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on June 28, 2016, by telephone.

The issue for determination is whether the respondent correctly ended petitioner's MA benefits June 1, 2016, due to a determination that her income exceeded program limits.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

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

By: [REDACTED]  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was determined eligible for MA benefits for a 2-person assistance group, with no income budgeted for her assistance group.

3. Petitioner commenced employment with the [REDACTED] as a part-time teachers aide, and her employer submitted an Employment Verification to the respondent indicating that petitioner is a school year employee working September through June. She earns \$15.15 per hour and is scheduled to work 5.5 hours per day. The school district reported that her income for June, 2016, would be \$1,128.68.
4. The respondent budgeted her monthly income as \$1,666.50.
5. By notice dated May 16, 2016, the respondent notified petitioner that her MA benefits would end June 1, 2016, due to income exceeding 100% of the Federal Poverty Level.

### DISCUSSION

BadgerCare Plus is Wisconsin's medical assistance program for those who are not elderly or disabled. Adults are ineligible if their household income exceeds the federal poverty level. That level for a two-person household, the size of the petitioner's, is \$1,335.00 per month. Wis. Stat. § 49.471(4)(a); *BadgerCare Plus Handbook*, § 50.1. The county agency ended petitioner's MA benefits after she started working with the [REDACTED] because it assumed her total household income would increase to \$1,666.50, or 124.83% of the federal poverty level.

BadgerCare Policy provides:

Earned income is income from gainful employment.

Under non-MAGI rules, earned income for individuals younger than 18 years old is not counted. The gross earned income before any deductions are taken out is counted.

Under MAGI rules, earned income after pre-tax deductions will be counted. See Section 16.3.2 Pre-Tax Deductions for more information on pre-tax deductions.

#### 1. **Contractual Income.**

This provision applies primarily to teachers and other school employees.

When an employed BadgerCare Plus group member is paid under a contract, either written or verbal, rather than on an hourly or piecework basis, the income is prorated over the period of the contract. For example, if the contract is for 18 months, the income is prorated over 18 months no matter the number of installments made in paying the income. The income is prorated even if one of the following is true:

1.
  - a. There are predetermined vacation periods
  - b. He or she will only be paid during work periods
  - c. He or she will be paid only at the end of the work period, season, semester, or school year

BadgerCare Plus Eligibility Handbook, §16.4.

There is simply no indication in the record that petitioner is paid under a contract here. The school district specifically stated that petitioner is paid hourly. It appears that the respondent prorated petitioner's income over the September-June school year, as the school district's information regarding petitioner's June, 2016, income does not match up with the budgeted income.

In the present situation, the record does not disclose when petitioner commenced employment with the [REDACTED]. The respondent has not established that it correctly averaged petitioner's income in determining eligibility, nor has it provided any citation to authority that would provide a foundation for the averaging apparently conducted here. Petitioner's income in June, 2016, appears to be lower than the federal poverty level, and it would appear likely to remain that way until September, assuming that petitioner's returns to work with the [REDACTED].

### CONCLUSIONS OF LAW

The respondent has failed to establish that it correctly determined that petitioner's monthly income exceeds 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 (1) reinstate the petitioner's household into the BadgerCare Plus program for June, 2016, and (2) re-determine petitioner's ongoing MA benefits eligibility for July, 2016, going forward.

### **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, **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 19th day of August, 2016

\s \_\_\_\_\_  
Peter McCombs  
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 August 19, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability