



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCS/142757

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on December 20, 2012, by telephone. Hearings set for September 4, September 26, and December 4, 2012, were rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly determined that the petitioner must pay a \$138 BCP premium to continue to receive BCP coverage for herself.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Michelle Vang, ES Spec.

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.

2. On May 1, 2012, the Department sent a notice to the petitioner and other BCP recipients, advising that the income levels at which BCP premium liability would kick in were being lowered effective July 1, 2012.
3. Prior to September 2012, the petitioner had an ongoing BCP case for her household of four persons (self, husband, two children). No adult in the household is elderly or disabled. The petitioner was duly notified that her case was subject to a periodic review in July 2012. A telephone review was completed on July 10, 2012, followed by a timely request for income verification.
4. On July 18, 2012, the county agency received weekly paystubs (6/19, 6/26, 7/3, 7/10) for the petitioner's husband from the Centralized Document Processing Unit (received two days earlier by CDPU). Following a clarifying voicemail message from the petitioner, the agency used 40 hours weekly at \$19.22 hourly in computing the household's income (disregarding one-time overtime as anomalous), resulting in gross earnings of \$3,075.20 monthly. This amount of income caused the adult petitioner to have a \$138 BCP premium liability. The children remained covered without a premium, and the husband was not requesting coverage.
5. On July 23, 2012, the Department issued written notice to the petitioner advising that her two children continued to be covered by BCP, without a premium. The notice also advised that the petitioner would have to pay a \$138 premium as of September 1, 2012, to retain her adult BCP coverage.
6. The petitioner's husband had gross earnings from [REDACTED] totaling \$1,798.30 (per stubs submitted at hearing) in August, before being laid off. The petitioner testified that he also received \$252 in August from Unemployment Compensation. These amounts total \$2,050.30, which is below 133% FPL, and ended the petitioner's need to pay a premium in the month following report of this decreased income.

The petitioner's husband was laid off from [REDACTED] throughout September 2012. He worked for several weeks at [REDACTED] grossing \$1,388.80, per paystubs submitted at hearing. The petitioner testified that he also received UC of \$708 in September. These amounts total \$2,096.80, which is below 133% FPL.
7. The petitioner reported a decrease in income to the agency on September 11, 2012. The agency did not act on the change.

DISCUSSION

BadgerCare Plus is a Wisconsin variant of MA for families with minor children, and pregnant women. Wis. Stat. §49.471; *BCP Eligibility Handbook (BCPEH)*, § 1.1, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

The income projected to be received by the petitioner's household of four persons was \$3,075. Although there is no income limit for BCP child eligibility, a premium is required to cover children where the household income exceeds 200% of the Federal Poverty Level (FPL). *BCPEH*, §50.1. There is no dispute that this household's income was not high enough to require a premium for the children.

For the household's adults, BCP financial eligibility exists, in general as follows:

- (1) if household gross income is at or below 133% FPL, the parent is eligible without a premium,
- (2) if household gross income is above 133% FPL but not over 200% FPL, the parent is eligible with a premium, or

(3) if household gross income is above 200% FPL, the parent is not BCP eligible.

BCPEH, §19.1 (7/1/12). Prior to July 2012, premiums were not imposed for adults with income below 150% FPL, but the adult premium threshold was dropped to 133% FPL on July 1, 2012. The prior authority for the 150% FPL adult premium threshold was found at Wis. Stat. §49.471(10)(b). The new, 133% FPL premium threshold was authorized by the federal government in April 2012, at Wisconsin's request, in an amendment to the BadgerCare §1115 waiver document, found online at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/wi/wi-badgercare-ca.pdf>

Currently, 133% of FPL is \$2,593 monthly. *BCPEH*, §50.1. The petitioner's household income of \$3,075 was over that amount, and thus the adults in the household had to pay a premium to be eligible for BCP beginning with September. The assigned \$138 premium was correct for this income level. *Id.*, § 48.1.

The petitioner did report a change (decrease) in household income to \$2,050 in early September. The agency should have acted on that change report, affecting premium liability from October 1, 2012 forward. I will ask the agency to confirm the Unemployment Compensation amounts for accuracy. If the UC income plus the earned income identified in Finding #6 puts the petitioner under 133% FPL, the agency will be directed to remove the premium liability for the petitioner from October 1, 2012, forward. The petitioner will still be responsible for the September premium.

CONCLUSIONS OF LAW

1. The petitioner's case was correctly subject to a \$138 BCP premium for the petitioner for September 2012.
2. The agency must re-determine the petitioner's adult BCP premium liability for October 1, 2012, onward, in accord with Finding #6 above.

THEREFORE, it is

ORDERED

That the petition is *remanded* to the county agency with instructions to redetermine the petitioner's BCP adult premium amount for October 1, 2012, onward, consistent with Finding #6. The agency may verify relevant Unemployment Compensation payments as part of this redetermination. This action shall be taken within 7 days of the date of this Decision. In all other respects, the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 3rd day of January, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals
BCPpremFPL2012



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 4, 2013.

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