



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCS/145124

PRELIMINARY RECITALS

Pursuant to a petition filed November 09, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Oneida County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on December 19, 2012, at Rhinelander, Wisconsin. At the request of the parties, the record was held open until for the county agency's closing argument to DHA and petitioner, and then for petitioner to submit her response to the DHA and the county agency. The county timely submitted its closing argument with attached "temporary absence" policy which is received into the hearing record. However, petitioner failed to submit any response to DHA even by the date of this Decision.

The issues for determination are: a) whether the county agency correctly and properly discontinued the BadgerCare (BC) Plus benefits of petitioner and her boyfriend effective November 1, 2012, due to gross household income above the BC gross income eligibility limits for a household of seven; and b) whether the county agency accurately established the petitioner's children's monthly cost share effective November 1, 2012 for the BC Benchmark program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Karen Smith, ESS

Oneida County Department of Social Services
Oneida Avenue
PO Box 400
Rhinelander, WI 54501

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Oneida County who has five children, and generally resides with [REDACTED] in a household of seven.
2. The petitioner and Mr. [REDACTED] have one child in common. As a co-parent his income must be counted in determining the petitioner's household's eligibility for the BadgerCare Plus program.
3. Mr. [REDACTED] is self-employed as a hearing specialist (selling hearing aids) for Hearings Advantage. The county agency budgeted that Mr. [REDACTED] receives self-employment income of \$8,684.75 per month based upon his 2011 tax return.
4. The petitioner is an employee of Mr. [REDACTED] who earned about \$1,600 every other week during November, 2012. Petitioner's income declined when she temporarily moved to Madison to care for her daughter.
5. Mr. [REDACTED] has declined BadgerCare (BC) benefits for his two children.
6. The petitioner and her five children received BadgerCare (BC) Plus Standard benefits.
7. One of the petitioner's daughters is receiving cancer treatments at a hospital in Madison. The length of her daughter's cancer treatment was unknown at the time of the December 19, 2012 hearing date, and thus was a temporary living arrangement.
8. On November 2, 2012, the petitioner notified county call center that she has been residing in Madison with her daughter while her daughter receives cancer treatments. The petitioner continues to rent an apartment in the Rhinelander, WI area.
9. The county agency determined that petitioner was not permanently "separated" from Mr. [REDACTED] but was "temporarily absent" from Rhinelander to care for her daughter.
10. The petitioner's ex-husband is paying to the petitioner monthly child support payments of \$98.08 for four of their children.
11. The county agency sent a November 5, 2012 Notice of Decision the petitioner indicating that the petitioner and her five children are eligible for BC Plus benefits with a BC monthly premium of \$108 as of December 1, 2012.
12. The county agency sent a November 16, 2012 Notice of Decision to the petitioner indicating that petitioner and Mr. [REDACTED] are no longer eligible for the BC program as of November 1, 2012, due to gross total household income of \$12,277 which is significantly above the BC income limit of \$5,935 for a household of seven; and b) petitioner's five children are only eligible for the BC Benchmark Plan with monthly premium of \$487.65 as of November 1, 2012.
13. The petitioner's BC changes are due to increases in gross total household income, petitioner's monthly raise of about \$860 as of November, 2012, petitioner receiving monthly child support from her ex-husband of about \$357.66 per month, and Mr. [REDACTED]'s self-employment income based upon his 2011 tax returns. The petitioner and Mr. [REDACTED] are not eligible for BC benefits as of December 1, 2012 due to income significantly above the BC income eligibility limits of \$5,935.00 for a household of seven.

DISCUSSION

Wisconsin's BadgerCare program, as set forth in *Wis. Stats.* §49.665, is intended to provide basic health care coverage for low-income families that do not have access to employer-subsidized health insurance. The Wisconsin Department of Health Services is charged with establishing the criteria for determining income under BadgerCare, *Wis. Stats.* §49.665(4) (a) 1. A family meets the financial eligibility requirements for BadgerCare on its initial application if its income does not exceed 185% of the poverty line, *Wis. Stats.* §49.665(4) (a) 1. **A family that is already participating in BadgerCare maintains its eligibility if its income does not exceed 200% of the poverty line, *Id.***

In the instant appeal, the petitioner's case is an appeal of the November 1, 2012 discontinuance of petitioner's BadgerCare benefits for herself and Mr. [REDACTED] due to excess income, and an increase in the monthly premiums for petitioner's five children. As explained above, the applicable income limit for a BadgerCare recipient is 200% of the poverty line. The income limit for a household of seven is \$5,935.00 pursuant to the *Medicaid Eligibility Handbook* § 39.5, "FPL Tables" and the *BadgerCare Plus Eligibility Handbook*, §50.1, "FPL Tables."

All available household income is counted in determining BadgerCare Plus eligibility unless some specific exception applies. *BadgerCare Plus Handbook*, 16.1, "Income." As a result, the petitioner's household's income of above \$12,000 is all counted in determining the household's gross income eligibility. There is no exception which applies to the petitioner's earned income, and therefore all of petitioner's household's income must be counted in determining petitioner's household's BadgerCare Plus income eligibility.

During the December 19, 2012 hearing, county agency representative, ESS Karen Smith, explained how the county agency had calculated the petitioner's total household income to be \$12,277. The county agency established that Mr. [REDACTED] receives self-employment income of \$8,684.75 per month based upon his 2011 tax return. In response to questions during the hearing, petitioner indicated that she did not know Mr. [REDACTED]'s income. However, [REDACTED] failed to appear at the hearing to testify, provide any income verification, or answer any questions regarding his income. The petitioner was unable to provide any evidence to refute that Mr. [REDACTED] had self-employment income of about \$8,684.75 per month during about November, 2012.

The petitioner alleged without any evidence that she was "separated" from Mr. [REDACTED] because she was residing part of the time in Madison to care for her daughter. The county agency responded that petitioner was "temporarily absent" from her Rhinelander residence, that there was no permanent separation, and thus Mr. [REDACTED] and his income should continue to be counted in determining BC income eligibility pursuant to eh *BadgerCare Plus Handbook*, 2.3.2, "Temporary Absence." The petitioner was unable to provide any testimony or evidence to refute the county's determination of her "temporary absence." Therefore, as indicated above, a family meets the financial eligibility requirements for BadgerCare on its initial application if its income does not exceed 185% of the federal poverty line, *Wis. Stats.* §49.665(4) (a) 1. **A family that is already participating in BadgerCare maintains its eligibility if its income does not exceed 200% of the poverty line, *Id.***

Mr. [REDACTED] and the petitioner both asserted that their income declined after petitioner's daughter moved to Madison for cancer treatment. In fact, in her December 28, 2012 closing argument, ES Supervisor Amy Mayo stated in pertinent part: "a summary report from the accountant was provided for the months of January-September, 2012. Although this is not a document we would normally accept as verification of self-employment I did review the information and apply it to the case per your request in the fair hearing. According to the new income amounts, the adults in this case remain ineligible for BadgerCare but there would be decrease in the monthly premiums."

The petitioner was unable to provide any evidence to refute that even the reduced gross household income her household income was still substantially above the gross income eligibility limits of \$5,935 for a household of seven pursuant to the *Medicaid Eligibility Handbook* § 39.5, "FPL Tables." However, based upon Ms. Mayo's statement in the above paragraph, the monthly premiums for the children need to be re-calculated for the petitioner's children retroactive to December 1, 2012. Furthermore, there is no evidence in the record that the county agency properly provided the required 10 day prior notice to the petitioner of the negative changes in her BC benefits, and thus the effective date for those actions must be December 1, 2012, and not November, 2012. Accordingly, based upon the above, I conclude that: a) the county agency correctly discontinued the BadgerCare (BC) Plus benefits of petitioner and her boyfriend effective December 1, 2012, due to gross household income above the BC gross income eligibility limits for a household of seven; and b) the county agency needs to re-calculate the petitioner's children's monthly premium cost retroactive to December 1, 2012 for the BC Benchmark program based upon reduced household income.

CONCLUSIONS OF LAW

1. The county agency correctly discontinued the BadgerCare (BC) Plus benefits of petitioner and her boyfriend effective December 1, 2012 (not November 1, 2012), due to gross household income above the BC gross income eligibility limits for a household of seven.
2. The county agency needs to re-calculate the petitioner's children's monthly premium cost share retroactive to December 1, 2012 for the BC Benchmark program based upon reduced household income.

THEREFORE, it is

ORDERED

The matter is remanded to the county agency with instructions to: a) discontinue the BadgerCare (BC) Plus benefits of petitioner and her boyfriend effective December 1, 2012 (not November 1, 2012), due to gross household income above the BC gross income eligibility limits for a household of seven; and b) re-calculate the petitioner's children's monthly premium cost share retroactive to December 1, 2012 for the BC Benchmark program based upon reduced household income and issue new notices to the petitioner regarding those re-calculated monthly premiums, within 10 days of the date of this decision. In all other respects, the petition for review herein be and the same is hereby 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 25th day of February, 2013

\sGary M. Wolkstein
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 25, 2013.

Oneida County Department of Social Services
Division of Health Care Access and Accountability