



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

BCS/145593

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 29, 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 for three weeks for the submission of written closing arguments by the county agency and then for a responsive statement from the petitioner to DHA. The county agency submitted a detailed closing argument regarding the calculation of petitioner's self-employment income in regard to BC income eligibility. The petitioner submitted a response closing argument to DHA, but also submitted some unsigned, undated 2011 tax forms. Both parties timely submitted their statements to DHA which are received into the hearing record.

The issue for determination is whether the county agency correctly discontinued the petitioner's BadgerCare (BC) Plus benefits effective November 1, 2012, due to gross income above the BC gross income eligibility limit for a household of three.

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: Amy Mayo, ES Supervisor  
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 resided with his wife, [REDACTED], their daughter, [REDACTED], and their five year old son, [REDACTED] during October, 2012. Petitioner's BadgerCare household was only three persons during November, 2012 (petitioner, his wife, and [REDACTED]) because [REDACTED] turned 19 years of age.
2. During October, 2012, petitioner completed his BadgerCare Plus review application with the county agency.
3. Mr. [REDACTED] is the sole owner of a business, [REDACTED] which is an S corporation. The county agency used the petitioner's 2011 US income tax 1120 S and K-1 forms to calculate his monthly self-employment "compensation to officers" of \$22,300 and monthly income of \$2,970.07 including adding back deducted depreciation and other non-allowable deductions as income) from that business. In addition, the petitioner is paid \$250 per week in wages which was confirmed in a State wage match.
4. The petitioner's unsigned 1120S form indicates gross business receipts or sales of \$308,622 and total deductions of \$207,781.59 (line 20) with ordinary business income loss of \$9,752.45. See US tax return 1120S of [REDACTED]
5. The petitioner receives monthly earned income of \$85 from the [REDACTED]
6. The petitioner's wife, [REDACTED] has earned income of \$336 per week from the [REDACTED]
7. The petitioner's daughter, [REDACTED] had earned income during October, 2012 of \$181.25 per week.
8. During petitioner's October, 2012 review, the county agency determined the petitioner's total gross household income to be \$5,124.07 during October, 2012 for a household of four, and \$4,399.07 for a household of three during November, 2012.
9. The petitioner's household gross earned income of \$5,124.07 for October, 2012 was above the 200% Federal Poverty Limit (FPL) of \$3,841.66 for a household of four; and the petitioner's gross household income of \$4,399.07 for November, 2012 was above the FPL of \$3,181.67 for a BC household of three.
10. The county agency sent an October 19, 2012 Notice of Decision to the petitioner stating that the BadgerCare Plus benefits for petitioner would discontinue effective November 1, 2012, due to gross household income of \$4,399.07 which was above the gross income eligibility limits of \$3,181.67 for a household of three. That same notice stated that petitioner's child, [REDACTED] was eligible for the BadgerCare Benchmark Plan as of November 1, 2012 with a \$55.00 monthly premium.
11. The petitioner was unable to provide any reliable evidence to refute the county agency determination that his household's gross income was substantially above the gross income eligibility limits of \$3,181.67 for a household of three as of November 1, 2012.

### 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.***

BC Recipients must not currently have insurance or access to insurance provided by an employer. Income tax deductions for **depreciation must be added back into income** when determining medical assistance eligibility. *Wis. Admin. Code*, § DHS 103.07(2)(a). In addition, many other tax deductions (in addition to depreciation) are not allowed as deductions in calculating petitioner's income for BC income eligibility such as the \$20,781.59 in total deductions on petitioner's 2011 1120S tax form. This means that when using the previous year's income tax return to determine income, the Department must add any deduction taken for depreciation and other non-allowable deductions back as income. Furthermore, applicants cannot claim any other deductions such as the earned income deduction allowed for other parts of the medical assistance program. *BadgerCare Plus Eligibility Handbook*, § 43.7.2.

The county agency ended BadgerCare Plus benefits effective November 1, 2012 for the petitioner's household of three after determining that their countable income exceeded 200% of the federal poverty level. For a three-person household this income limit is \$3,181.67. The agency determined that the petitioner's gross household income was \$4,399.07 as of November, 2012. This is significantly higher (about \$1,200) than the BC income limit for continued eligibility (in part due to adding depreciation back into petitioner's self-employment income).

In the instant appeal, the petitioner's case is an appeal of the November 1, 2012 discontinuance of petitioner's BadgerCare benefits for himself, due to excess income. As explained above, the applicable income limit for a BadgerCare recipient is 200% of the poverty line. The income limit for a household of three is \$3,181.67 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 \$4,399.07 for November, 2012 is all counted in determining the household's gross income eligibility.

During the December 19, 2012 hearing and in her closing argument, ES Supervisor Amy Mayo explained how it had calculated the petitioner's total gross household income to be \$5,124.07 during October, 2012 for a BC household of four, and \$4,399.07 for a household of three. See above Preliminary Recitals. While petitioner was argumentative during the hearing and contested some of the calculation of his household income, he was unable provide any reliable evidence to refute that MES correctly calculated the household's gross income. Furthermore, while the record was held open, the petitioner was unable to provide any reliable evidence (signed tax returns or any convincing evidence) to refute that his household's gross income of \$4,399.07 was above the gross income eligibility limits of \$3,181.67 for a household of three pursuant to the *Medicaid Eligibility Handbook* § 39.5, "FPL Tables." Accordingly, for the above reasons, I must conclude that the county agency correctly discontinued the petitioner's BadgerCare (BC) Plus benefits effective November 1, 2012, due to gross household income above the BC gross income eligibility limits for a household of three.

### CONCLUSIONS OF LAW

The county agency correctly discontinued the petitioner's BadgerCare (BC) Plus benefits effective November 1, 2012, due to gross household income above the BC gross income eligibility limits for a household of three.

**THEREFORE, it is**

**ORDERED**

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 12th day of March, 2013

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\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 March 12, 2013.

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