



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCC/145944

PRELIMINARY RECITALS

Pursuant to a petition filed December 17, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Wood County Human Services - WI Rapids in regard to Medical Assistance, a hearing was held on January 22, 2013, at Washburn, Wisconsin.

The issue for determination is whether the agency correctly ended the petitioner's BadgerCare Plus Core Plan benefits for allegedly failing to verify income information after she had already been approved for benefits and before her enrollment period ended.

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: No Appearance

Wood County Human Services - WI Rapids
320 West Grand Avenue
PO Box 8095
Wisconsin Rapids, WI 54495 -8095

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Bayfield County.

2. The petitioner completed a BadgerCare Plus Core Plan renewal on December 21, 2011, and was found eligible for all of 2012.
3. The Department notified the petitioner on September 19, 2012, that it was ending her BadgerCare Plus Core Plan benefits as of November 1, 2012, because she did not verify her income.
4. The agency has not submitted any evidence about what specific verification it sought from the petitioner.
5. The petitioner's income has not exceeded 133% of the federal poverty level at any time relevant to this decision.

DISCUSSION

The petitioner received medical assistance under the BadgerCare Plus Core Plan, which expanded medical assistance coverage to persons between 18 and 64 years old whose income is less than 200% of the federal poverty level and who do not have any children under 19 years old. *BadgerCare Plus Eligibility Handbook*, § 43.2. Her benefits were renewed for all of 2012 on December 21, 2012. Those receiving benefits and who are not exempt from paying premiums must report any change that causes their income to exceed 133%, 150%, 185%, 200%, 250%, 300%, 350%, or 400% of the federal poverty level. *BadgerCare Plus Handbook*, § 43.8.1.1.1. Once the change of income has been reported, the recipient must verify the income or her benefits will end. *Id.*

The petitioner submitted a self-employment reporting form to the agency when she applied for FoodShare in the late summer or early fall of 2012. It is unclear what happened next because no one from the agency appeared. (The Northern Consortium's representative called after the hearing and said that she left her telephone number online. The Division of Hearings and Appeals computer program indicates that the Northern Consortium was appearing on the case and includes an exhibit it submitted, but the program does not indicate what worker was appearing for them or that worker's telephone number.) The petitioner contends that she never received a request for verification of her income in the BadgerCare Plus Core Plan matter. She also contends that she was not required to submit any verification because her income never exceeded 200% of the federal poverty level; nor as will be shown did it exceed any of the other percentages listed in *BadgerCare Plus Handbook*, § 43.8.1.1.1

The only exhibit the agency submitted was the notice to the petitioner that her benefits were ending. (As in another matter heard last month, it submitted three copies of the exhibit; one is sufficient.) The agency did not submit any documentation showing what verification it sought. The petitioner submitted a self-employment reporting form with her FoodShare application. Without evidence of what further verification the agency sought, there is no way to determine if the verification was needed to confirm *any* change of income, much less one that exceeded one of the thresholds. It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. By seeking to end the petitioner's BadgerCare Plus Core Plan benefits, the county agency is the moving party. The Department acknowledged the principle laid down in *Hanson* in *Final Decision AT1-40/87198* where Deputy Secretary Richard Lorang ruled on August 17, 1995, that in any fair hearing concerning the propriety of an agency action, the county or state agency has the burden of proof to establish that the action it took was proper given the facts of the case. The agency cannot establish that the petitioner failed to submit proper verification without presenting some evidence of the type of verification it requested.

More importantly, the notice the petitioner did receive—the one ending her benefits—indicated that her total income was \$316.66 in September, October, and November 2012. As noted, she had reported this income, which apparently was from a new self-employment venture, when she applied for FoodShare. The federal poverty level for a single person is \$907.50. *Medicaid Eligibility Handbook*, § 39.5. This

means that her income was less than 35% of the federal poverty level. Because FoodShare benefits vary with income even among the poorest recipients, any amount of income is relevant and will trigger a requirement that she verify her income for that program. Moreover, the request for verification in the FoodShare matter came when she was applying for benefits, a time when anyone seeking any public benefit must verify income. But income at this level does not affect BadgerCare Plus Core Plan benefits in any way. It is not until income reaches 133%, the amount that causes those who are not disabled to pay a premium, that a change must ever be reported in BadgerCare Plus matters. It is unclear whether the petitioner's benefits would have been affected after her income crossed the 133% threshold or after it crossed the 200% threshold, but it is clear that her income never approached either level. The verification requirement is not a mere academic exercise but rather is a means to ensure that changes in benefits are based upon proven evidence. When a change in income will not affect benefits, requiring verification would serve no purpose and would needlessly waste the agency and petitioner's time and resources. There may be times, such as incidents of suspected fraud or when income is close to a relevant threshold where it might make sense to require verification even if the reported income is below the threshold. But with the petitioner's income barely a quarter of the lowest verification threshold and no allegation that she misstated that income, this is not one of those times. One final point that needs to be made is that it does not matter that the agency had a report of some change in the petitioner's income because of her FoodShare application and that she apparently did not receive those benefits because she failed to verify that income. Proof of her income, regardless of its level, was relevant for her FoodShare application. Proof of her income at the low level it was at in the middle of her BadgerCare Plus Core Plan enrollment period was not relevant to determining whether there should be a change in those benefits. What the agency did was discontinue her benefits because she failed to verify irrelevant information. It has no authority to do this and must reinstate those benefits.

I note that because the petitioner would have been due for her annual review after she filed her appeal, the agency may require her to file a renewal application for the program. It should allow her the normal time limits to complete this reapplication process. **It cannot withhold the benefits ordered in this decision while she completes the reapplication process.**

CONCLUSIONS OF LAW

The agency incorrectly ended the petitioner's BadgerCare Plus Core Plan benefits because she was not required to verify her income.

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 reinstate the petitioner's BadgerCare Plus benefits retroactive to November 1, 2012. Nothing in this decision prevents the agency from requiring the petitioner to file a renewal application provided it gives her sufficient time to complete this process. However, it *cannot* withhold the benefits ordered in this decision while she completes the reapplication process.

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 8th day of February, 2013

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 8, 2013.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability