



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCS/146074

PRELIMINARY RECITALS

Pursuant to a petition filed December 20, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a telephone hearing was held on January 16, 2013.

The issue for determination is whether the county agency correctly and accurately calculated the petitioner's BadgerCare Plus premium due to an increase in petitioner's household income.

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: Sharon Thacker
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. On November 30, 2012, the respondent processed petitioner's Six Month Report form, wherein petitioner noted her employment with [REDACTED]. An Employer Verification of Earnings Form was received by respondent, which indicated that petitioner was a temporary employee earning an

hourly rate of \$25.50 for 40 hours of work each week. The employer noted on the form that the position was temporary, and was slated to terminate on February 15, 2013.

3. The petitioner receives child support for her two children in the amount of \$370.78/month.
4. The petitioner's household's total countable income of \$ 4,813.28¹ was above the BC premium requirement of \$2,115.80, thereby requiring the petitioner to pay a monthly BC premium.
5. The BadgerCare premium due for petitioner's household, considering a countable income of \$4,813.28, is \$457.00 per month.
6. The county agency sent a December 13, 2012 Notice of Decision to the petitioner stating that due to an increase in her earned income, the petitioner owed a BadgerCare Plus monthly premium of \$457.00 as of January 1, 2012.
7. On December 20, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

BadgerCare is an expansion of the Wisconsin Medical Assistance program designed to provide coverage to children under 19 and their parents. Wis. Stats. §49.665; Wis. Admin. Code § DHS 103.03; Medicaid Eligibility Handbook, § 5.7.1.1 MA – BadgerCare eligibility has the non-financial requirement that the household contain a person under age 19. If so, MA – BC is also available to the custodial parent of the person under 19. See, WI Admin Code § DHS 103.03(1)(f).

A household must also meet financial requirements. Medicaid Eligibility Handbook § 5.7.6. All households are now required to be tested using prospective budgeting. Medicaid Eligibility Handbook § 4.1.6. Prospective budgeting is the determination of one month's benefits based on the agency's best estimate of income and circumstances that will exist in that month. Reconciliation at a later date using actual income figures is no longer required to be performed by county agencies under the MA Program.

The petitioner's household's countable income of \$4,813.28 exceeded 300% of the Federal Poverty Level (FPL). A lower income limit of 150% of the FPL is used as the demarcation between households that must pay a premium and those that do not pay. *MEH*, § 5.7.8. For incomes over 300% FPL, the premium is derived by multiplying the countable income times .095 and rounding to the nearest dollar to get the premium amount. BadgerCare+ Eligibility Handbook § 48.1.2. .095 of \$4,813.28 equals \$457.2616, which was properly rounded to \$457.00.

An issue was raised at hearing regarding the premium assessed for February, 2013, which apparently increased to \$465.00. According to electronic case comments, this was caused by a slight increase in household unearned income, i.e. child support increased from \$185.39 to \$224.10, and the inclusion of earned income from petitioner's daughter. This change does not appear to have been effectuated until December 26, 2013, approximately 5 days after petitioner filed the instant appeal. In any event, I have reviewed the respondent's calculations, and do not find any error.

During the January 16, 2013, hearing, respondent presented a well-documented case to establish that the county agency correctly and accurately established a BadgerCare Plus Premium for the petitioner due to an increase in her household earned income. The petitioner was unable to refute the respondent's case that it correctly calculated the petitioner's gross household income. The petitioner was also unable to refute that the respondent was accurately budgeting her earned and unearned income in determining the

¹ I note that there is a discrepancy in the counted income for BadgerCare Plus purposes as compared to that calculated for FoodShare purposes. See, DHA decision FOO/146075. BadgerCare Plus and FoodShare are distinct aid programs, and each is governed by its own regulations, and as such, petitioner's daughter's earned income was counted for BadgerCare Plus, but not for FoodShare.

BadgerCare premium. While I empathize with petitioner's argument that she simply cannot afford the premiums assessed, administrative law judges do not have the power to address issues of fairness and equity. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. We are required to apply the law as written.

As a result, I conclude that the respondent determined that the respondent correctly determined that petitioner must pay a monthly BadgerCare premium based upon the "Badger Care Premiums" chart premiums in the Medicaid Eligibility Handbook, §8.1.11, with reference to the premiums table found in the BadgerCare+ Eligibility Handbook § 48.1.2. The petitioner's concurrent appeal related to FoodShare benefits will be discussed in a separate decision, as different rules apply.

CONCLUSIONS OF LAW

The respondent correctly determined petitioner's income, and based upon that determination, properly calculated the monthly BadgerCare premium to be paid by petitioner.

THEREFORE, it is

ORDERED

The petition for review 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 13th day of February, 2013

\sPeter 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 February 13, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability