



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCS/146100

PRELIMINARY RECITALS

Pursuant to a petition filed December 21, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services ["ESC"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on February 05, 2013.

The issue for determination is whether it was correct to discontinue petitioner's BadgerCare Plus MA ["BC+"] effective January 1, 2013 due to income.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Alma Lezama, HSPC
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

OTHER PERSON PRESENT:

[REDACTED], petitioner's husband

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. Petitioner lives with her husband and 3 sons; one of her sons is over the age of 19 years.
3. Petitioner's Family Income is in excess of \$4,000 per month; part of the income is Social Security (SSDI; not SSI) received by one of petitioner's younger sons.
4. Petitioner's BC+ was terminated effective January 1, 2013 because she is over the income limit.

DISCUSSION

In general, all available gross income is counted when determining BC+ eligibility. *BadgerCare + Eligibility Handbook* ["BC+EH"] 16.1. Certain types of income are disregarded. However, petitioner does not have any of the types of income that are disregarded. BC+EH 16.2.

With certain exceptions not applicable here, a person is eligible for BC+ only if the countable monthly family income does not exceed 200% of the Federal Poverty Level ["FPL"]. Wis. Stat. § 49.471(4) (2011-12); BC+EH 16.1. *Family income* means the total gross earned and unearned income received by all members of a family (except that earnings of children under 18 years of age are disregarded). Wis. Stat. §§ 49.471(1)(f) & 49.471(7)(c)2. (2011-12). It is noted that the Social Security income is not earned income -- it is unearned income. Therefore, it must be counted.

Petitioner does not dispute that she is over income for BC+. Her Family income is over \$4,000 per month. A child must be under the age of 19 years to count in the Test Group. BC+EH 2.2.1.2 & 5 & 10. Thus, her Test Group size is 4 persons. The income limit for a Test Group size of 4 persons is \$3,925.00. See , BC+EH 50.1. Petitioner and her husband request an exception to the income limit because they are very close to the income limit and need health insurance. Petitioner's circumstances are sympathetic. However, the legal income requirements for BC+ eligibility do not allow for an exception as requested by petitioner.

Petitioner testified that as of January 2013 her son no longer receives Social Security. In light of this, petitioner should reapply for BC+ (if she has not already done so) as she might now be again eligible.

CONCLUSIONS OF LAW

For the reasons explained above, it was correct to discontinue petitioner's BC+ effective January 1, 2013 due to income.

NOW, THEREFORE, it is

ORDERED

that 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

\sSean P. Maloney
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.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability