



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCS/146566

PRELIMINARY RECITALS

Pursuant to a petition filed January 11, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on February 07, 2013, at Milwaukee, Wisconsin. A concurrent appeal concerning FoodShare benefits is addressed in a separate decision.

The issue for determination is whether respondent correctly assessed an MA premium in accordance with petitioner's income.

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: Sharon Thacker

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who resides in a BadgerCare Plus (BC+) household of one.

2. At all times material hereto, the petitioner was employed by [REDACTED] which operated an establishment known as [REDACTED]
3. During November, 2012, petitioner's pay stubs reflected gross earned income of \$1,525.46.
4. Petitioner's paystubs dated December 20, 2012 and January 3, 2013, reflected gross income of \$793.78.
5. Petitioner commenced receiving Unemployment Insurance benefits on or about March, 2012, but those benefits were not budgeted as a result of agency error.
6. The petitioner's total gross household income for January, 2013, was prospectively calculated as \$1525.46, pursuant to the petitioner's November, 2012, paystubs.
7. The correct BadgerCare premium due for a household size of one with a gross income between \$1,489.33 - 1,582.41 ranges from \$67.00 – 71.00 per month.
8. The county agency sent a December 17, 2012 notice to the petitioner stating that due to his earned income, the petitioner owed a BadgerCare Plus monthly premium of \$69.00 as of January 1, 2013.
9. The petitioner's household's prospectively calculated gross earned income of \$1525.46 was above the BC+ premium requirement of \$1,238.00 thereby requiring the petitioner to pay a monthly BC+ premium for a family size of one.

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 (MEH)*, § 5.7.1.1. BC+ eligibility has the non-financial requirement that the household contain a person under age 19. If so, 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. *MEH* § 5.7.6. All households are now required to be tested using prospective budgeting. *MEH* § 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.

To be eligible for BadgerCare, an applicant family cannot have income greater than 185% of the poverty line, and cannot have access to a certain level of employer-based coverage. Wis. Stats. §49.665(4). An ongoing BadgerCare recipient group cannot have income greater than 200% of the poverty line in order to continue eligibility. *MEH*, §5.7.6.2.2. The petitioner's household's gross income of \$1,525.46 was below the 200% income limit of \$1,861.68 for a household size of one.

After a household qualifies for the BadgerCare program, a determination is made as to whether a premium must be paid by the household. A lower income limit of 150% of the poverty line is used as the demarcation between households that must pay a premium and those that do not pay. *MEH* § 5.7.8. In this case, the petitioner was unable to refute that the county correctly and accurately determined his monthly income to be \$1,525.46, which exceeded 150% of the poverty line (\$1,238.00). As a result, the county correctly determined that the petitioner's household must pay a monthly BadgerCare premium of \$69.00 based upon the chart of premiums in *MEH* §48.1, "Badger Care Premiums."

The petitioner argues that his employer has been misreporting his earnings, apparently fraudulently, in an effort to avoid having to pay his employees at a rate equivalent to the minimum wage. The petitioner has not reported this matter to the Department of Workforce Development, but testified that he is considering

legal action. Due to the employer's allegedly incorrect information, petitioner has provided time clock records to the respondent, and requested that those records be used to arrive at a correct income calculation. Unfortunately, petitioner failed to substantiate those records at hearing, and I am unable to determine or verify the validity of the data that they supposedly contain. I cannot conclude that the respondent should have used those time clock records without further evidence of the validity of those records. Furthermore, respondent is entitled to rely upon the petitioner's November pay stubs; I find that the petitioner has failed to prove by a preponderance of the evidence that his November paystubs were incorrect.

Petitioner also argues that his income fluctuates, and he illustrates his point by noting the almost 50% drop in his income between November and December of 2012.¹ However, I note that when dealing with fluctuating income, the *Medicaid Eligibility Handbook* instructs as follows:

If the amount or frequency of regularly received income is known, average the income over the period between payments. If neither the amount nor the frequency is predictable, do not average; count income only for the month in which it is received.

MEH, § 16.6.

During the February 7, 2013 hearing, the respondent presented a well-documented case to establish that the county agency correctly and accurately established a BC Plus Premium for the petitioner due to the reported household earned income, in accordance with BC Plus rules and regulations. The petitioner failed to prove by a preponderance of the evidence that the respondent should have used other income information in determining petitioner's income. Accordingly, based upon the above, I conclude that the county agency correctly determined petitioner's monthly BadgerCare premium to be \$69 for January, 2013.

CONCLUSIONS OF LAW

The county agency correctly and accurately calculated the petitioner's monthly BadgerCare premium of 69.00 based upon the income information it had received.

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

¹ To establish the difference in income for the months of December and January, 2012, petitioner relies on his pay stub information. It is unknown whether, or to what extent, any discrepancies identified by the time clock records would have impacted the difference in income.

"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 11th day of March, 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 March 11, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability