



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCS/147024

PRELIMINARY RECITALS

Pursuant to a petition filed January 28, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Marathon County Department of Social Services [“County”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on February 26, 2013. The Hearing for this matter was held at the same time as the Hearing for the following related matter concerning the same petitioner: FOO-147025.

The issue for determination is whether it was correct to increase petitioner’s BadgerCare Plus MA [“BC+”] monthly premium effective January 1, 2013.

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: Maikou Yang, ESS
Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. Petitioner receives BC+ and her BC+ group consists of 4 people: herself and her 3 minor children.
3. The father of petitioner's 3 minor does not live with petitioner and the children.
4. Petitioner's 3 children are eligible for Social Security; petitioner has provided documentation showing that the monthly Social Security payments for petitioner's children are made on their behalf directly to their father; neither petitioner nor her children receive those Social Security payments and the father does not make the payments available to petitioner.
5. The County increased petitioner's BC+ monthly premium effective January 1, 2013 due to the monthly Social Security payments for petitioner's children.

DISCUSSION

The existence and amount of a BC+ Core premium depends on income. See, *BadgerCare + Eligibility Handbook* ["BC+EH"] 19.1. In general, all available gross income is counted. BC+EH 16.1. Income is unavailable when it will not be available for 31 days or more. The person must document that it will not be available for 31 days or more. Income is available when:

1. It is actually available, and
2. The person has a legal interest in it, and
3. The person has the legal ability to make it available for support and maintenance.

BC+EH 16.1.

In this case the monthly Social Security payments for petitioner's children are not available because they are made directly to their father and the father does not make the payments available to petitioner. Therefore, the Social Security payments should not be counted as income for petitioner for purposes of BC+.

CONCLUSIONS OF LAW

For the reasons explained above, the monthly Social Security payments for which petitioner's children are eligible should not be counted as income for petitioner for purposes of BC+.

THEREFORE, it is

ORDERED

that this matter be REMANDED to the County and that, within 10 days of the date of this *Decision*, the County recalculate petitioner's BC+ premium retroactive to January 1, 2013 by not including the monthly Social Security payments for which petitioner's children are eligible as income for petitioner and, if necessary, issue a refund to petitioner of any BC+ premiums she overpaid retroactive to January 1, 2013.

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 19th day of March, 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 March 19, 2013.

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