



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/148257

PRELIMINARY RECITALS

Pursuant to a petition filed March 25, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regards to the reduction of BadgerCare Plus, a telephone hearing was held on April 25, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly determined that the household must pay a \$666 per month premium, effective April 1, 2013, for BadgerCare Plus benefits to the two household adults, due to a change in household composition and an increase in household income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Belinda Bridges, HSPC
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. On March 1, 2013, she was the casehead of a three person BadgerCare Plus group composed of herself and two minor children; and all three were certified as eligible under the "BC Standard Plan", without a monthly premium requirement. The household's sole source of income was the petitioner's earned income, computed for MA purposes, as \$1,281.22 per month.

2. On March 6, 2013, the petitioner reported that: █████ █████ had moved into the household; he is the father of her two children in the household; and that he had self-employment earnings from an auto repair business. The agency requested verification of █████'s earnings.
3. On March 8, 2013, the petitioner provided █████'s 2011 federal tax return, including his Form 1040 Schedule C, "Profit or Loss from Business". The Schedule C revealed that his net profit or loss after expenses and depreciation was \$1,178 in 2011 (line 31); and that he had deducted \$67,627 in depreciation expenses in that tax year.
4. At present, █████'s 2012 tax return has not been prepared or submitted.
5. The Department added back the depreciation of \$67,627, to the net income of \$1,178, to arrive at █████'s estimated total countable annual income for the program's purposes of \$68,805, from self-employment in auto repair, or pro-rata, \$5,733.75 per month. See, Exhibit #1, p.10.
6. The Department added the petitioner's gross earned income for BC+ purposes (calculated differently than income is for FS purposes, which uses a bi-weekly multiplier of 2.15 for bi-weekly pay periods) of \$1,281.22 to █████'s gross estimated income of \$5,733.35, for gross total income of \$7,014.97 per month. See, Exhibit #1, at p. 18.
7. On March 11, 2013, the Department issued a Notice to the petitioner informing her that BC+ Standard Plan coverage would continue for the two minor children in April, 2013; that █████ was eligible for BC+ Benchmark coverage; and that █████ would be eligible for BC+ if she paid a premium of \$666 per month, effective April, 2013. This change was because █████, and his estimated self-employment income, had been added to the household by the March 6, 2013, report, and subsequent verification of his income.
8. On March 25, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals in the above-numbered action contesting the imposition of a \$666 premium as it affected her, and █████'s, BC+ eligibility.
9. To date, the petitioner has not paid the premium for April, 2013, or May, 2013.

DISCUSSION

The BC+ Standard Plan gross income limit for a household of 4 persons is \$3,925. See, *BadgerCare Plus Handbook*, § 50.1. In determining self-employment income, the agency used the best evidence available, the petitioner's 2011 tax return and the Schedule C. See, *BadgerCare Plus Handbook*, § 16.4.3.2.2. It correctly added back depreciation to net profit to ascertain █████'s estimated gross self-employment income from auto repair business for the BadgerCare Plus Standard Plan eligibility computation. See, *BadgerCare Plus Handbook*, § 16.4.3.2.3. Here, when this addback is performed, the household's gross income is \$7,014.97 per month, far in excess of the gross income limit of \$3,925 for Standard Plan eligibility for the two adults. The minors remain, and remained, eligible for Standard Plan coverage without premium requirement.

The petitioner and her co-parent assert that it is unfair for the Department to count the depreciation expenses as income attributable to the household.

As described above, it must be included for Standard Plan computations. Then, however, BC+ policy requires the deduction of the expense from income in a computation of whether the adults are *eligible* for BC+ Benchmark (or premium-related) coverage. Exhibit #1, at p. 18, demonstrates that the agency did so and determined that the "Countable Income Excluding Depreciation" in this case was \$1,379.39 for Benchmark coverage eligibility purposes. This means the adults can be eligible. However, the policy for the Benchmark coverage then turns to the computation of the premium and requires that the depreciation be added back *again* to determine the ultimate premium due. See, *BadgerCare Plus Handbook*, § 19.1 Note: First paragraph, Item #3).

Further, the policy directs that for countable income in excess of 300% of the Federal Poverty Level, that the countable income be multiplied by .095 to arrive at the monthly premium. See, *BadgerCare Plus Handbook*, § 48.1.2. With depreciated added back, this household was determined by the agency to have countable income at 357.45% of the FPL. See, Exhibit #1, at p. 18. That countable income is \$7,014.97 per month for premium computational purposes. See, Exhibit #1, at p. 18. $\$7,014.97 \times .095 = \666.42 , i.e., the \$666 per month premium assessed for April, 2013, by the agency here.

There is no exception under the program policies or federal law for these circumstances. The agency action must be sustained under these facts as correct.

As a side-note to the petitioner, this household must pay the \$666 premiums due for April, 2013, and May, 2013, or the agency will act to discontinue BC+ Benchmark coverage, if it has not already done so. The petitioner and her co-parent would be well-advised to act immediately to remedy the non-payment if the adults desire continuation of coverage.

CONCLUSIONS OF LAW

That the Department correctly computed the petitioner's household income and imposed a \$666 per month BC+ Benchmark Plan premium, effective April, 2013, for the petitioner and the co-parent.

THEREFORE, it is **ORDERED**

That the petition for review herein be, and the same hereby 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 2nd day of May, 2013

\sKenneth D. Duren, Assistant Administrator
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 May 2, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability