



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/149969

PRELIMINARY RECITALS

Pursuant to a petition filed June 13, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on July 10, 2013, at West Bend, Wisconsin.

The issue for determination is whether the BadgerCare+ eligibility of Petitioner and spouse was correctly discontinued because of income in excess of BadgerCare+ gross income limits.

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: Julie Williamson

Washington County Department of Social Services
333 E. Washington Street, Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. Petitioner filed this appeal to contest the discontinuance of BadgerCare+ for Petitioner and his spouse. The couple's two children continued to be covered with a total premium of \$68.00 per month.
3. The reason for this discontinuance was that Petitioner's household income was in excess of BadgerCare+ income limits.
4. The BadgerCare+ income limit for adults is 200% of the Federal Poverty Level. 200% of the Federal Poverty Level (FPL) for a household of 4 at all times relevant here was \$3895.00. *BadgerCare+ Eligibility Handbook (BEH)*, §§16.1 and 50.1.

5. The agency determined that household income for Petitioner household to be \$4289.76. This consisted of self-employment income for Petitioner in the amount of \$2784.67 based at least in part on the most recent available tax returns from 2011 and earned income of \$2142.00 for Petitioner's spouse (\$14.00 x 38.25 hrs. bi-wkly). Petitioner also owns a rental property and had a 2011 tax loss of \$2241 with \$5896 on depreciation.

DISCUSSION

In order to determine financial eligibility for BadgerCare+ one must first determination of who must be in the BadgerCare+ test group. Parents living with their child/ren under age 19 must be included in the same BC+ test group. *BadgerCare+ Eligibility Handbook (BEH)*, §2.2.1. This makes Petitioner's BadgerCare+ test group size 4 people.

The income limit for adult BadgerCare+ eligibility is 200% of the Federal Poverty Level (FPL) which is \$3925.00 for a group of 4. See *BEH*, §§16.1 and 50.1, respectively. The gross earned and unearned income of all eligible individuals in the household over age 18 is counted. *BEH*, §16.4.

An additional, relevant policy relates to depreciation:

16.4.3.2.3 Disallowed Expenses

Generally, expenses that are allowed by the IRS on business tax forms are considered allowed expenses for BadgerCare Plus. However, some specific expenses allowed in the calculation of Self Employment Income on the IRS tax forms but are not allowed for BadgerCare Plus. These are:

1. Depreciation: Net self-employment income for BC+ groups is first determined without allowing depreciation expenses. If the group's total countable IM income exceeds 200% of the Federal Poverty Level, the self employed group is allowed a second income test. For the second test, net self-employment income is redetermined, this time deducting depreciation expenses. If the total countable IM income minus the depreciation is less than 200% of the Federal Poverty Level, the adults and children are eligible for the Benchmark Plan. The premium for the parents and children in the household is 5% of the household's total countable gross income including depreciation. (i.e., depreciation expenses are not deducted)

...
BEH, §16.4.3.2.3.

Petitioner would like some deductions allowed but the Medicaid program use gross income and the Division of Hearings and Appeals does not create law or policy and cannot allow deductions if the program does not allow them.

The income for Petitioner's spouse is clear and comes from her paycheck stubs. Ignoring depreciation and offsetting the rental loss against Petitioner's self-employment taxable income I calculate his income to be \$2147.75 (\$28014-\$2241/12). This plus his spouse's income of \$2142 equals the agency sum of \$4289 and is over the 200 % of the FPL for a group of 4, thus Petitioner and his spouse are not BadgerCare+ eligible.

Further, based on the above, as Petitioner's household income was in excess of \$3895.00 a premium is required for the children:

The following individuals must pay a premium to become or remain eligible for BC+:

1. Children in families with income over 200% of the Federal Poverty Level (FPL).

...
BadgerCare Eligibility Handbook, §19.1

CONCLUSIONS OF LAW

That the agency correctly discontinued Petitioner’s BadgerCare+ because of income in excess of program income limits.

THEREFORE, it is

ORDERED

That this appeal 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 Milwaukee,
Wisconsin, this 29th day of August, 2013

\sDavid D. Fleming
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 August 29, 2013.

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