



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/150679

PRELIMINARY RECITALS

Pursuant to a petition filed July 13, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance, a hearing was held on October 30, 2013, at Appleton, Wisconsin. Hearings scheduled for August 5, 2013, September 25, 2013, and October 21, 2013, were rescheduled at the petitioner’s request.

The issue for determination is whether the respondent correctly determined that petitioner must pay a monthly premium in order to maintain her BadgerCare Plus benefits.

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: Lisa Watkins

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. Petitioner was employed by [REDACTED] in at least May and June of 2013. Petitioner’s paystubs dated 5/9/13, 5/23/12, and 6/6/13 indicate that petitioner averaged 80.50 hours worked

per pay period, including 1.72 hours of overtime and average monthly commissions of \$187.92. Based upon the foregoing, the respondent calculated average monthly gross income of \$2,212.88 as of July 1, 2013. Exhibit 2.

3. The respondent sent notice to the petitioner on July 1, 2013, indicating its monthly income calculation, and specifying that petitioner's BadgerCare Plus coverage would continue but would now require payment of a monthly premium in the amount of \$108.00, effective June 1, 2013. No premium was assessed for petitioner's child.
4. Petitioner timely appealed the BadgerCare Plus premium notice.

DISCUSSION

BadgerCare Plus allows children under 19 and their parents to receive medical assistance if their income falls within the limits found in the *BadgerCare Plus Eligibility Handbook*, § 16.1.; Wis. Stat. § 49.471. Premiums and eligibility depend upon a household's income, which includes "the total gross earned and unearned income received by all members of a family." Wis. Stat. § 49.471(1)(f). Unless they are pregnant, adults are ineligible if their household income exceeds 200% of the federal poverty level. Wis. Stat. § 49.471(4)(a). Adults must pay a premium if their countable income exceeds 133% of the federal poverty level; they must pay a premium on behalf of their children if their countable income exceeds 200% of the federal poverty level. *BadgerCare Plus Handbook*, § 19.1. For a family of two, the size of the petitioner's household, 133% of the federal poverty level is \$1,719.03. *BadgerCare Plus Eligibility Handbook*, § 50.1. Premiums are calculated on a sliding scale ranging from 3% to 9.5% of countable income, with the percentage increasing as the income rises above 133% of the federal poverty level. *BadgerCare Plus Handbook*, §§ 19.2 and 48.1.2. Petitioner's income is between 170% and 179% of the federal poverty level, and the premiums associated with this income range from \$108-\$114. *BadgerCare Plus Eligibility Handbook*, § 48.1.2.

At hearing the respondent conceded that the petitioner's premium obligation should not have commenced until August, 2013. Petitioner's testimony did not dispute the income calculation prepared by the respondent, but petitioner did raise concerns regarding the affordability of the premiums. I note that the actual budget was not submitted as an exhibit, and thus the hearing record is incomplete in this regard. Based upon the respondent's concession, I will remand this matter to the respondent to rescind the premium requirement for June and July of 2013, and to review and re-determine petitioner's premium, if any, for the period of August, 2013, forward.

CONCLUSIONS OF LAW

The respondent has conceded that petitioner did not have a Badgercare premium obligation in June and July of 2013.

THEREFORE, it is

ORDERED

The respondent shall rescind the petitioner's BadgerCare Plus premium obligations for June and July of 2013. The respondent shall review and re-determine petitioner's premium obligations, if any, for the period of August, 2013, forward. The respondent shall issue a new Notice of Decision to the Petitioner with its determination and shall issue new appeal rights in that notice to the Petitioner. These actions shall be completed within 10 days of the date of this decision.

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 14th day of November, 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 November 14, 2013.

Outagamie County Department of Human Services
Division of Health Care Access and Accountability