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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

BCS/151048

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 31, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on August 27, 2013, at Racine, Wisconsin.

The issue for determination is whether the BadgerCare+ eligibility of Petitioner 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]

Respondent:

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

By: Kathy Christman

Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner's BadgerCare+ household size is 2; himself and his son.
3. Petitioner filed this appeal to contest the discontinuance of BadgerCare+ for Petitioner. His son continued to be covered with a total premium of \$10.00 per month.
4. The reason for this discontinuance was that Petitioner's household income was in excess of BadgerCare+ income limits.

5. The agency noted in a routine wage cross match that Petitioner might have more income than the agency was budgeting for the purpose of determining BadgerCare+ eligibility. It sought verification from Petitioner of income.
6. Petitioner's son receives Social Security benefits in the amount of \$780.00 per month.
7. Petitioner owns and operates a small business. On a June 24, 2013 Employer Verification of Earnings he reported paying himself a wage of \$200-300 per week on an irregular basis. The agency averaged three months (June, July and August 2012) of self-employment report forms and concluded Petitioner had net income of \$1130.33 over that three month period. The \$1130.33 is with depreciation of \$185.00 added back. [I also averaged the income from those months and arrived at a higher average income than did the agency – \$1148.33 with depreciated added back in. Nonetheless, I am using the agency calculation herein as that what was presented at the hearing.]
8. The agency added the Social Security of \$780.00, the self-employment of \$1130.33 and \$250 per week in wages or \$1000.00 per month (unlike the FoodShare program there is no multiplier for the BadgerCare+ program) to arrive at gross income of \$2910.33 per month. This included \$185 per month of depreciation that was added back to Petitioner's income. If the depreciation is deducted, income is \$2725.33 per month.
9. The BadgerCare+ gross income limit for adults a group of 2 is 200% of the Federal Poverty Level (FPL) or \$2585.00. *See BadgerCare+ Eligibility Handbook (BEH), §50.1.*

### DISCUSSION

In order to determine financial eligibility for BadgerCare+ one must first determination of who must be in the BadgerCare+ test group. A parent living with their child 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 2 people.

The income limit for adult BadgerCare+ eligibility is 200% of the Federal Poverty Level (FPL) which is \$2585.00 for a group of 2. *See BEH, §§16.1 and 50.1, respectively.* The earned income of all eligible individuals in the household over age 18 is counted as are Social Security benefits. *BEH, §§16.4 and 16.5.* Children under age 19 are typically BadgerCare+ eligible but where income is over 200% of the FPL, a premium is due for the children in the group. *BEH, §19.1.*

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 argues that whatever he makes in net income from the business is reinvested so he is not earning the amount determined by the agency. Nonetheless, net income from a business is added to household income. *See generally, BEH §§16.4.3 – 16.4.3.2.4.* Further, the Division of Hearings and

Appeals does not create law or policy and cannot allow deductions if the program does not allow them. Petitioner has not provided information that rebuts the agency determination of income described above. Perhaps if he has 2012 taxes completed by the time of this decision and completes new self-employment forms he may reapply and be able to demonstrate that his income has fallen below BadgerCare+ gross income limits.

Petitioner's household income was over the BadgerCare+ 200 % of the FPL income limit (again, \$2585.00) based upon the agency determinations noted at Finding #s 7 and 8. Thus Petitioner is ineligible for BadgerCare+ but his son remains eligible with a premium.

Finally, there are a number of changes that will be taking place relatively soon regarding health care coverage so I note the following for Petitioner, based on information as the undersigned understands is as of the date of this Decision -

Wisconsin Medicaid law will change significantly, effective January 1, 2013. On that date, a person is eligible for Wisconsin Medicaid if his income is at or below 100% of the federal poverty level; it will no longer be necessary that a recipient be under 19, elderly, blind, disabled, or a caretaker relative. The January 2014 version of Medicaid may be applied for online from November 18, 2013 onward at Wisconsin's website, <https://access.wisconsin.gov>. If household income is in excess of 100% of the Federal Poverty Level, BadgerCare+ will be discontinued; notices are being sent out at this time so Petitioner should read them carefully.

A person may apply for subsidized private health insurance beginning on October 1, 2013, with coverage beginning effective January 1, 2014 (if you enroll by December 15, 2013). Late enrollments will be allowed until March 31, 2014, but will not be retroactive. Enrollment can be accomplished via the federal website, <https://www.healthcare.gov> or through the federal call center at 1-██████████. When applying, the program will want to know the petitioner's tax household's adjusted gross income for the last tax filing year. If things are working properly, the program should be able to see the household's adjusted gross income for the prior year via a federal "data hub." That income information will be used to assign a percentage of poverty level to the household, which in turn is used to calculate the amount of the premium subsidy that will be provided. A household at 101% of the federal poverty level (FPL), and which picks a "silver" insurance plan, will pay no more than 2% of gross income for its premium, as the rest will be covered by the subsidy. The subsidy percentage tapers off as income rises. A household at 399% FPL, which picks a "silver" plan, will pay no more than 9.5% of its income for its premium. I believe that 400% FPL for a household of four persons (which the petitioner may have) is \$92,200.

When shopping for insurance via phone or website, the buyer will have a choice of plans labeled with various "medal" colors. Each color represents a different level of shared responsibility between the insurer and the insured for medical bills incurred. The breakdown is: Platinum-90% insurer/10% patient, Gold-80% insurer/20% patient, Silver-70/30, and Bronze-60/40. The idea behind this stratification is to allow the consumer to see "apples-to-apples" insurance comparisons. The patient's premium cost for a Platinum or Gold plan will be more than the percentages stated in the prior paragraph for a Silver plan.

The various insurance plans may also have varying co-payments and deductibles. If a household's income is below 250% FPL (about \$59,000 for a family of four), there will also be a subsidy to help pay co-payments and deductibles. This subsidy is called a "cost sharing reduction" or CSR.

As to which insurers would be available in Wisconsin's market for this program, from the insurance commissioner's website, it appears that the following insurers will be available in parts (in some cases, all) of Wisconsin: Common Ground Healthcare Cooperative, CompCare Health Services Insurance Corporation, Dean Health Plan Inc., Group Health Cooperative of South Central Wisconsin, Gundersen Health Plan Inc., Health Tradition Health Plan, Medica Health Plans of Wisconsin, MercyCare HMO Inc., Molina Healthcare of Wisconsin Inc., Physicians Plus Insurance Corporation, Security Health Plan of Wisconsin Inc., Unity Health Plans Insurance Corp., and Arise (WPS).

**CONCLUSIONS OF LAW**

That the agency has demonstrated that Petitioner's income is in excess of 200% of the FPL for a group of 2 thus Petitioner is not BadgerCare+ eligible though Petitioner's son is eligible but with a premium.

**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 15th day of October, 2013

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\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 October 15, 2013.

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