



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/152828

PRELIMINARY RECITALS

Pursuant to a petition filed October 16, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Jefferson County Department of Human Services in regard to Medical Assistance (MA)/ BadgerCare Plus (BCP), a hearing was held on November 6, 2013, at Jefferson, Wisconsin.

The issue for determination is whether the county agency correctly discontinued adult BCP, and imposed a premium for the children, effective September 1, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Lea Flores, FEP

Jefferson County Department of Human Services
Workforce Development Center
874 Collins Rd.
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Jefferson County.
2. BadgerCare Plus (BCP) is a Wisconsin variant of MA for low-income families with minor children. The petitioner filed an annual BCP renewal with the Department on August 21, 2013.

Requested income verification was received by August 30, 2013. The Department then issued written notice to the petitioner advising that BCP could open for the household's children (subject to a premium), but that the petitioner and her husband were ineligible due to excess income.

3. In finding the household ineligible, it is undisputed that the Department correctly ascribed combined gross income from employment at [REDACTED] (petitioner) and [REDACTED] (spouse) to the household, totaling \$4,655.14. The petitioner is also self-employed. She has a restaurant which loses money (\$2,304.24 monthly), and a grocery store with income (\$485.33) that is totally offset by the restaurant losses. Per the petitioner's 2012 federal income tax return, the couple also has a rental property which generates unearned income of \$2,930.08 monthly. The total of \$4,655.14 earned income plus \$2,930.08 unearned income is \$7,585.22, which places the household at 386% of the federal poverty line.
4. At hearing, the petitioner stated that her household resides in the restaurant building, which carries two mortgages (\$1,900 and \$860) totaling \$2,760 monthly.

DISCUSSION

BadgerCare Plus is an expansion of the Wisconsin Medical Assistance program meant to provide insurance for children under 19 and their parents. Wis. Stat. §49.471; *BadgerCare Plus Eligibility Handbook (BCPEH)*, 1.1. There are two major BCP benefit plans. The BCP Standard Plan (full MA benefits) is available to a family that does not have income greater than 200% of the poverty level, and that does not have access to a certain level of employer-based coverage. Wis. Stats. §49.471(8). The BCP Benchmark Plan (limited services) is available to children in households with income above 200% of the poverty line. Wis. Stat. §49.471(4)(b)4. The poverty level grid (FPL) can be seen at *BCPEH* at §50.1, online at <http://www.emhandbooks.wi.gov/bcplus/>.

There is no dispute that the household's gross wages and the 2012 rental income put the adults over the income limit for adult BCP. Use of the most recent year's tax return is long-standing, standard practice by the Department when dealing with an established self-employment enterprise. *BCPEH*, § 16.4.3.2.

The petitioner correctly noted that the mortgage expense for the building in which she lives is subtracted from income in her FoodShare benefit calculation. The federal FoodShare rules expressly allow for such a deduction in that program. *See*, 7 C.F.R. § 273.9(d)6. However, through January 1, 2014, the BCP statute does not allow for the subtraction of a household's residential mortgage expense from gross income:

(c) When calculating an individual's family income, the department shall do all of the following, subject to par. (d):

1. Deduct from the individual's income, up to the amount of the individual's income, any amount the individual is obligated to pay for court-ordered child or family support or maintenance.
2. Disregard earnings of children under 18 years of age.
3. Determine separately the family incomes of caretaker relatives and the children for whom they are caring and not legally responsible.
4. Not include in the calculation any income of an individual receiving benefits under s. 49.77 or federal Title XVI [SSI].

Wis. Stat. § 49.471(7)(c).

CONCLUSIONS OF LAW

1. The Department correctly denied continuing adult BCP coverage for the adults in the petitioner's household due to excess income.

THEREFORE, it is

ORDERED

That the petition 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, Room 651, 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 10th day of December, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals
BCPfin



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 10, 2013.

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