



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCC/153151

PRELIMINARY RECITALS

Pursuant to a petition filed October 29, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Marquette County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus Core Plan, a hearing was held on December 12, 2013, at Montello, Wisconsin.

The issue for determination is whether the Department correctly sought to discontinue the petitioner's BadgerCare Plus Core Plan benefit effective November 1, 2013. More specifically, the issue is whether the Department correctly added the petitioner's depreciation deduction back in for the income determination.

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: Annett Mooney, ES Spec.

Marquette County Department of Human Services
480 Underwood Avenue
PO Box 99
Montello, WI 53949-0099

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Marquette County.

2. The BadgerCare Plus Core (BCP-C) Plan is a Wisconsin variant of MA for low-income, non-disabled, non-elderly, childless adults. The petitioner was due for an annual “renewal” by November 1, 2013.
3. The petitioner timely completed his renewal in October 2013. On October 7, 2013, the Department issued written notice to the petitioner advising that his BCP-C would be discontinued effective November 1, 2013. The basis for discontinuance was excess income. Exhibit 1.
4. The petitioner is a BCP-C household of one person. He is self-employed as a farmer. Per Schedules D and F from the petitioner’s 2012 federal income tax return, his farm had gross earnings of \$116,000.00 and allowable business expenses of \$107,202, for a difference of \$8,798. To that \$8,798, the agency added back in the \$13,407 depreciation and \$522 disallowable amortization expense, to arrive at annual countable farm income of \$22,727. The agency also counted the \$10,104.12 in capital gains proceeds from the return. The \$22,727.00 plus \$10,104.12 totaled \$32,831.12, which is \$2,735 monthly when divided by 12 months.
5. The petitioner’s household monthly income exceeds \$1,915; his income is at 285% of the federal poverty level.

### DISCUSSION

BCP-C is authorized by Wis. Stat. §49.45(23) and a federal waiver document. To qualify for BCP, a person must meet both non-financial and financial requirements. The petitioner appears to have satisfied all nonfinancial requirements.

Although there is no asset test, the BCP-C program has an income limit for participants of 200% of the federal poverty level (FPL). *BadgerCare Plus Eligibility Handbook (BCPEH)*, §43.7.2. The 200% limit is required by statute:

**(23) ASSISTANCE FOR CHILDLESS ADULTS DEMONSTRATION PROJECT.**

**(a)** The department shall request a waiver from the secretary of the federal department of health and human services to permit the department to conduct a demonstration project to provide health care coverage for basic primary and preventive care to adults who are under the age of 65, who have family incomes not to exceed 200 percent of the poverty line, and who are not otherwise eligible for medical assistance under this subchapter, the Badger Care health care program under s. 49.665, or Medicare under 42 USC 1395 et seq. If the department creates a policy under sub. (2m) (c) 10., this paragraph does not apply to the extent that it conflicts with the policy.

Wis. Stat. §49.45(23)(a). The current 200% FPL for a group of one person is \$1,915.00. *BCPEH*, §50.1, available at [www.emhandbooks/wisconsin.gov/bcplus/](http://www.emhandbooks/wisconsin.gov/bcplus/). The petitioner’s household income is above that level.

The petitioner does not contest the figures shown on his 2012 tax return. However, he questions the agency’s inclusion of the depreciation amount. The agency correctly followed the Department’s instruction by including the depreciation amount as income:

### 43.7.2 Income and Resources

In order to qualify for the Core Plan, an applicant or member's gross monthly income must not exceed 200% of the FPL for the FTG size (1 or 2). See [Chapter 16](#) for types of income that are counted or not counted and instructions on how to budget income.

#### Deductions

There are no income deductions allowed for the Core Plan.

Unlike the BadgerCare Plus Benchmark Plan, *depreciation* is not an allowed expense when calculating income for self-employed Core Plan applicants and members.

*BCPEH*, § 43.7.2. Thus, closure of his Core Plan case was correct.

Also, as was mentioned at hearing, the law on the books as of the date of hearing was that the Core Plan is to end for all persons effective December 31, 2013:

#### 43.1 Core Plan

The BC+ Core Plan will be ending on December 31, 2013. Core Plan members with AG income at or below 100% FPL will be transitioned to the BC+ Childless Adults coverage group without have to reapply. Coverage for Core Plan members with AG income over 100% of the FPL will be terminated effective December 31, 2013. These individuals may be eligible to receive advanced premium tax credits and cost-sharing reductions available through the Federally-facilitated Marketplace.

However, there is a bill pending in state legislature (passed the Assembly, not yet acted upon by the Senate) will extend the Core Plan to April 1, 2014, and end the Core Plan at that time.

### CONCLUSIONS OF LAW

1. The petitioner was ineligible for BCP-C from November 1, 2013, forward, 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 13th day of December, 2013

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\sNancy J. Gagnon  
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 December 13, 2013.

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