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[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

|

[REDACTED]
BCS/155037

PRELIMINARY RECITALS

Pursuant to a petition filed January 22, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on February 26, 2014, at Milwaukee, 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:

Teri Ackeret
5036 S 92nd St #1
Greenfield, WI 53228

Respondent:

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

By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest the discontinuance of BadgerCare+ for Petitioner and spouse effective February 1, 2014.
3. The reason for this discontinuance was that the agency determined that Petitioner's household income was in excess of BadgerCare+ income limits.
4. The agency noted in a January 2014 case review that Petitioner's household had additional income from unemployment compensation that was not included in determining BC+ eligibility for February 2014.

5. Petitioner's household consists of herself, her husband and a granddaughter. They do receive Kinship Care benefits for the grandchild.
6. The agency determined household income to total \$3570.36 consisting of \$2094.36 of earned income and \$1476.00 of unemployment compensation. From this a child support obligation of \$283.80 was subtracted leaving gross household income at \$3282.56. The Kinship benefit was not counted.
7. The agency compared Petitioner's February 2014 household income to 200% of the Federal Poverty level for a group of 2 and concluded that the household had income in excess of that limit.
8. During the period involved here, the BadgerCare+ gross income limit for adults for a group of 2 was 200% of the Federal Poverty Level (FPL) or \$2621.67; for 3 it was \$3298.33. *See Operations Memo 14-10, issued January 31, 2014 and effective February 1, 2014 at page 7.*
9. Petitioner's BadgerCare+ eligibility was restored effective March 2014 as income dropped below even \$2621.67. This leaves only February 2014 as the month for which eligibility is an issue here. Petitioner did have medical expenses in that month.

DISCUSSION

In order to determine financial eligibility for BadgerCare+ one must first determination of who must be in the BadgerCare+ test group. For household's where there is a caretaker relative the spouse, child and primary person are part of the BadgerCare+ test group:

If the primary person is a caretaker relative of a child under age 19 or the spouse of a caretaker relative of a child under age 19, the BC+ Test Group will include the following individuals:

1. The caretaker relative,
2. The caretaker relative's spouse,
3. The child under age 19 who is under the care of the caretaker relative,

...

BadgerCare+ Eligibility Handbook (BEH), §2.3.1.1.

This makes Petitioner's BadgerCare+ test group size 3 people rather than a group of 2.

For BadgerCare+ case open before February 2014 the new Modified Adjusted Gross Income (MAGI) rules were not applicable as of the time of the determinations here. *See BEH, §2.3 and expanded definition of MAGI.*

Thus the income limit for adult BC+ eligibility was 200% of the FPL which is \$3298.33 for a group of 3 as of February 1, 2014. *See BEH, §§16.1 and 50.1, respectively.* Unemployment compensation benefits are counted as income. *BEH, § 16.5.* Kinship Care benefits are excluded. *BEH, §16.2.* Court ordered support is deducted from income. *BEH, §16.3.1.* Children under age 19 are typically BadgerCare+ eligible but where income is over 200% of the FPL, a premium is due for the children. *BEH, §19.1.*

Petitioner's household income was under the BadgerCare+ 200 % of the FPL income limit for a group of three (again, \$3298.33) for February 2014 so Petitioner's BadgerCare+ should not have been discontinued as of February 1, 2014.

As a reminder – this was noted at the hearing - as of April 1, 2014 adults with income above 100% of the Federal poverty level are not BadgerCare+ eligible so this decision does not have an affect beyond February 2014.

CONCLUSIONS OF LAW

1. That Petitioner's BC+ test group size is 3.

2. That Petitioner's household income was less than 200% of the FPL for the month of February 2014 thus her BadgerCare+ eligibility was incorrectly discontinued.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to rescind the BadgerCare+ case closure that was effective February 1, 2014. This must be done within 10 days of the date of this decision.

Note: Petitioner's benefits were continued pending the hearing decision thus she had BadgerCare+ coverage for February 2014. The effect of this Order is to remove the case closure coding so that there is no overpayment of BadgerCare+ charged to Petitioner for February 2014.

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 Milwaukee,
Wisconsin, this 11th day of April, 2014

\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 April 11, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability