



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/156059

PRELIMINARY RECITALS

Pursuant to a petition filed March 14, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on March 27, 2014, by telephone.

The issue for determination is whether the Department correctly denied the petitioner's BCP application due to excess income.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Jose Silvestre, IM-Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In March 2014, the petitioner filed an application for the BCP program, seeking eligibility as a childless adult effective April 1, 2014.

3. Because the petitioner has earned income, the Department mailed an income verification request to the petitioner on March 11, 2014. The petitioner filed a timely response to that request.
4. On March 14, 2014, the Department issued written notice to the petitioner, advising that the petitioner was not eligible for BCP, due to excess income. The petitioner appealed.
5. The adjusted gross income relied upon by the Department in its determination was \$984.50 in wages for February from MSOE. The petitioner is a household of one person, and his gross income exceeds the income limit for an adult for BCP.
6. The petitioner is a postsecondary student who incurs higher education expenses. When the petitioner's higher education expenses, not exceeding \$4,000 annually, are subtracted from his income, the resulting adjusted gross income is under the relevant BCP income limit for the petitioner.

DISCUSSION

BadgerCare Plus is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. The program's nonfinancial eligibility standards were broadened effective April 1, 2014, to include adults who do not have minor children in their home. Wis. Stat. § 49.45(23); 2013 Wisconsin Act 116, § 29, for effective date; *BadgerCare Plus Eligibility Handbook (BCPEH)*, § 2.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (viewed in March 2014). The petitioner meets the nonfinancial eligibility tests for the program.

The petitioner must also pass an income test. An eligible applicant cannot have adjusted gross income exceeding 100% of the federal poverty level (FPL). Wis. Stat. § 49.45(23)(a); *BCPEH*, § 16.1. The 100% FPL amount is \$972.50 monthly for a household of one in 2014. *Id.*, § 50.1.

The Department has calculated a gross income amount for the petitioner of \$984.50, based on the average of two submitted paystubs. From gross income, the Department is allowed to subtract only those income tax deductions listed on lines #16 - #19 of the federal 1040A tax return, subject to modifications listed at 42 C.F.R. § 435.603(e).

The petitioner's disagreement with the Department's income calculation pertains to the allowable deduction at line 19 of the 1040A return, for "higher education expenses." Both the IRS and state policy allow subtraction of up to \$4,000 annually/\$333 monthly for postsecondary tuition, school fees and books. *BCPEH*, § 16.3.3; IRS Form 8917. The parties agree that the petitioner is paying more than enough higher education expenses to bring his adjusted gross income under the \$972.50 monthly level. Thus, the petitioner is eligible for BCP (childless adult) effective April 1, 2014.

By the start of hearing, the agency realized that higher education expenses had not been subtracted, and the agency agrees that the petitioner will be eligible on the first date allowed by law, April 1, 2014. The agency had already performed the certification function by the conclusion of the hearing, so the matter will not be remanded to the agency for further action.

CONCLUSIONS OF LAW

1. The petitioner's adjusted gross income does not exceed the relevant limit for BCP eligibility.
2. The Department incorrectly denied the petitioner's BCP application.
3. The Department certified the petitioner by BCP by the time of hearing.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 28th day of March, 2014

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



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 28, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability