



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/157016

PRELIMINARY RECITALS

Pursuant to a petition filed April 21, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on June 10, 2014, by telephone.

The issue for determination is whether the Department correctly imposed an adult premium as a condition of the petitioner's ongoing BCP certification.

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: Tom Miller, ES Supr.

Western Region Consortium, for
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Vernon County.

2. The petitioner had an ongoing BadgerCare Plus (BCP) case for herself and her two minor children, [REDACTED] and [REDACTED]. In March 2014, the petitioner correctly reported that [REDACTED] [REDACTED] and his minor son, [REDACTED], had moved into her household.
3. Because Mr. [REDACTED] is the father of [REDACTED], the agency combined the household into one group for BCP purposes. This created a BCP household of five persons. The household income was determined to be \$5,047.57 in countable income monthly. This put the household into an excess income extension, as they are above the 100% Federal Poverty Level of **\$3,093.55** for a group of five. Therefore, the Department imposed an adult BCP premium of \$338 monthly.
4. On April 9, 2014, the Department issued written notice to the petitioner, advising that she would continue to be eligible for BCP, subject to a \$338 adult monthly premium, effective May 1, 2014. The petitioner appealed.
5. Mr. [REDACTED] receives gross wages of \$3,615.50. The petitioner has monthly income of \$1,114.75 from self-employment, plus \$181.66 in child support for [REDACTED]. The agency incorrectly included \$135.66 in child support for [REDACTED], because Mr. [REDACTED] is the support payor.

DISCUSSION

BadgerCare Plus is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. The petitioner meets the *nonfinancial* eligibility tests for the program. The program's financial eligibility standards were narrowed effective April 1, 2014. 2013 Wisconsin Act 116, § 29, for effective date; *BadgerCare Plus Eligibility Handbook (BCPEH)*, § 16.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (viewed in July 2014).

The petitioner must 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, and \$1,310.83 for a household of two persons in 2014, etc., and \$3,093.55 for five persons. *Id.*, § 50.1. The household exceeds the 100% income limit, and was placed into extension status, due to the increase in the household's earned income (the addition of [REDACTED] income). *Id.*, § 18.1.

The Department has calculated a gross income amount for [REDACTED] of \$3,615.50, based on the average of submitted pay verification. 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 (or lines #23-35 on the 1040 return), subject to modifications listed at 42 C.F.R. § 435.603(e). The petitioner did not identify any of these adjusted gross income deductions as being applicable here.

The petitioner disagrees with three aspects of the Department's determination. First, she argues that [REDACTED]'s income should not be counted in the BCP group's income, because they are not married. If they did not have a child in common, that argument would work. However, they do have a child in common, so [REDACTED] and his income are automatically pulled into the BCP household, per state statute. *Id.*, § 2.3.2.2; Wis. Stat. § 49.471(1)(e) & (4)(a)4b.

The petitioner's second disagreement with the Department's income calculation pertains to the gross income calculation. She asserts that [REDACTED]'s wages are garnished to the tune of \$895.91 bi-weekly. This garnishment is to pay off money judgments related to his prior restaurant operation. This Judge confirmed in CCAP that [REDACTED] has such money judgments entered against him. The garnishment amount appears on the Vernon County paystub submitted in the hearing record. Department policy does not mention garnishments as an expense that is a pre-tax deduction that be subtracted in the BCP eligibility calculation. *BCPEH*, § 16.3.2. Garnishments are not listed as excluded income under 42 C.F.R. § 435.603(e). Mr. [REDACTED]'s federal income tax return is not in the hearing record, so it is unknown if he

subtracts the garnishment from his “tax return line 7” wages. Thus, the garnishments cannot be subtracted here, and Mr. [REDACTED]’ income alone put the household over 100% FPL for a household of five.

Finally, the petitioner correctly argued that the child support allegedly received by [REDACTED] should not be counted, noting that [REDACTED] is the payor. The agency agreed at hearing to make a redetermination that removes the amount shown as child support received by [REDACTED]. Additionally, MAGI income rules specify that received child support is not counted. *BCPEH*, § 16.2, #40. However, I will not issue a remand order here because the household is clearly income-ineligible, even if all child support is removed.

CONCLUSIONS OF LAW

1. The agency correctly included Mr. [REDACTED] and his income in the BCP group size and family income because he has a child in common with the petitioner.
2. Garnished amounts are not subtracted from gross earnings in a BCP eligibility determination.
3. The petitioner’s household income exceeds the relevant limit for BCP eligibility.
4. The Department correctly imposed the petitioner’s BCP adult premium.

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 11th day of July, 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 July 11, 2014.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability