



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/157117

**PRELIMINARY RECITALS**

Pursuant to a petition filed April 21, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on June 05, 2014, at Racine, Wisconsin.

The issue for determination is whether the agency correctly denied the Petitioner for the BadgerCare Plus (BCP) Program.

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: Rhonda Kramer

Racine County Department of Human Services  
1717 Taylor Ave.  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Racine County.
2. Petitioner's household size is two.
3. The petitioner applied for BadgerCare Plus (BCP) on November 1, 2013. (Exhibit 4).

4. On March 31, 2014 the Department sent the petitioner a notice stating that he was ineligible for the BCP program because he was over the income limit. That notice stated that his counted household income was \$1,857.14 from his wife's employment. (Exhibit 4).
5. On April 30, 2014 the Department sent the petitioner a notice stating he was ineligible for the BCP program because his household income was over the program limit. That notice stated that his counted monthly household income was \$1,541.94 monthly from his wife's employment. (Exhibit 3).
6. The Petitioner filed a request for Fair hearing that was received by the Division of Hearings and Appeals on April 21, 2014. In his request for fair hearing the petitioner stated that he was not sure why the county was using his wife's gross income in determining eligibility when she has taxes and insurance deductibles taken out of her check reducing her take home pay to \$650.00 bi-weekly. (Exhibit 1).

### **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, 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, and \$1,310.83 for a household of two persons in 2014. *Id.*, § 50.1.

The petitioner's income used to determine BCP eligibility is "the sum of the MAGI-based income [modified adjusted gross income]" 42 C.F.R. §435.603(d)(1). A person's MAGI income is all taxable income with limited deductions. *BadgerCare Plus Eligibility Handbook (BCPEH)*, § 16.1.3, at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (viewed in June 2014). Under MAGI rules, pre-tax deductions will be allowed if the payments are taken out of the individual's paycheck on a pre-tax basis. *BadgerCare Plus Eligibility Handbook (BCPEH)*, § 16.3.2. Examples of pre-tax deductions include but are not limited to health insurance premium payments for medical, dental, or vision plans, health savings account, and retirement contributions. *Id.*

The budget printouts do not appear to account for deductions from the Petitioner's gross income for his health insurance premiums and retirement contributions. (Exhibit 8) These payments are listed on the employer verification of earnings. (Exhibit 6) They are also listed on the submitted paystubs. (Exhibit 2 and Exhibit 7) It should be noted that the paystubs in Exhibit 7 are somewhat illegible, while the paystubs in Exhibit 2 are clear.

Consequently, the agency will have to re-determine the Petitioner's income and re-determine his eligibility for the BadgerCare+ program. If the Petitioner disagrees with this new determination, he will have to file a NEW appeal.

### **CONCLUSIONS OF LAW**

The agency did not correctly deny the petitioner's application for BCP.

**THEREFORE, it is**

**ORDERED**

That the agency re-calculate Petitioner's income allowing for pre-tax deductions for health care premiums, retirement savings, and any other applicable deductions. The agency shall then re-determine Petitioner's eligibility based upon those new calculations. The agency shall take all administrative steps necessary to complete these tasks within 10-days of this decision.

**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 1st day of July, 2014.

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\sMayumi M. Ishii  
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 July 1, 2014.

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