



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/157185

PRELIMINARY RECITALS

Pursuant to a petition filed April 26, 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 May 21, 2014, at Milwaukee, Wisconsin. At the petitioner’s request, the hearing record was held open for 14 days for additional documentation; nothing was received.

The issue for determination is whether the Department correctly discontinued the petitioner’s adult BadgerCare Plus (BCP) benefits effective April 1, 2014.

There appeared at that time and place 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 Spec. Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) and his wife are non-elderly residents of Milwaukee County.

2. From at least December 2013 through March 31, 2014, all members of the petitioner's household were certified for BCP. In December 2013, state law was changed to lower the adult BCP income limits effective April 1, 2014.
3. On February 17, 2014, the Department issued written notice to the petitioner, advising that the petitioner and his spouse were not eligible for BCP effective April 1, 2014, due to excess income. Their minor child remained eligible. The petitioner appealed.
4. The petitioner's household consists of himself, his wife, and minor child. The child is the petitioner's tax dependent, and the child is not expected to be required to file a 2014 tax return. The child receives \$667 in Social Security benefits, which are not included for BCP purposes.
5. The adjusted gross income relied upon by the Department in its determination was \$1,880 in Social Security benefits (\$1,213 for the petitioner, \$667 for his wife).

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 changed by state law effective April 1, 2014, to exclude adults with adjusted gross household income exceeding 100% of the federal poverty level (FPL). Wis. Stat. § 49.471(4)(a)4; 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 100% FPL amount is \$972.50 monthly for a household of one, and **\$1,649.17** for a household of three persons in 2014. *Id.*, § 50.1.

The petitioner has a minor child who resides with him and is expected to be his tax dependent. Because the child is "not expected to be required to file a tax return" for 2014, the child's income of \$667 monthly is not counted towards the petitioner's household income for BCP eligibility. *BCPEH*, §16.1.3.

The Department has calculated a gross income amount for the petitioner of \$1,880, based on the adults' verified Social Security income. 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.

Adjusted gross income for tax purposes does not normally include all of a person's Social Security benefit. However, for BCP purposes, all Social Security income is included:

(2) *Modified adjusted gross income.* Modified adjusted gross income means adjusted gross income (within the meaning of section 62) increased by—

- (i) Amounts excluded from gross income under section 911;
- (ii) Tax-exempt interest the taxpayer receives or accrues during the taxable year; and
- (iii) Social security benefits (within the meaning of section 86(d)) not included in gross income under section 86.

26 C.F.R. § 1.36B-1(e)(2), cross-referenced from 42 C.F.R. § 435.603(i). See also, *BCPEH*, § 16.5, item #3.

Thus, the Department correctly calculated the petitioner's household income to be \$1,880, which is over the three-person limit. The petitioner explained that his wife desperately requires medical care, and that he cannot afford the deductible and co-payments required by a Marketplace plan. However, I cannot deviate from the income requirements established under state law.

CONCLUSIONS OF LAW

1. The petitioner's household income exceeds the relevant limit for adult BCP eligibility.
2. The Department correctly discontinued the petitioner's household's adult BCP certification effective April 1, 2014.

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 21st day of July, 2014

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals
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State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 21, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability