



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/157275

PRELIMINARY RECITALS

Pursuant to a petition filed April 30, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on June 26, 2014, at West Bend, Wisconsin.

The issue for determination is whether the agency correctly denied Petitioner’s application for the BadgerCare+ 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: Ken Benedum

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Washington County.
2. Petitioner applied for BadgerCare+ on or about March 14, 2014.

3. Petitioner's BadgerCare+ application was denied. The reason for the denial was that the agency determined Petitioner's income to be in excess of BadgerCare+ income limits.
4. The agency found that Petitioner had the following income: \$1000.08 per month from a disability policy. As that put Petitioner over the income limit the agency did not seek verification of other income received by Petitioner; specifically, \$7875 year or \$656.25 per month in income from property rental.
5. Petitioner's BadgerCare+ group size is 1.
6. The income limit for BadgerCare+ eligibility for a group of 1 is \$972.50. *BadgerCare Plus Eligibility Handbook (BEH)*, §50.1.

DISCUSSION

BadgerCare Plus is a Wisconsin variant of the Medicaid program, for non-elderly, non-disabled Wisconsin residents. *BadgerCare Plus Eligibility Handbook (BEH)*, § 2.1. An applicant must pass an income test. The income limit for a childless adult for BadgerCare+ purposes is 100% of the Federal Poverty Level. For a group size of 1 that limit is \$972.50. *BEH*, §50.1. As Petitioner has applied for BadgerCare+ in March 2014 the modified adjusted gross income (MAGI) rules apply. *BEH*, §3.3.3.

The determination as to whether Petitioner's disability payments constitute income for purposes of the BadgerCare+ program is the issue here. With the inclusion of the disability payment Petitioner is over that income limit; without it he is under the limit.

The agency contends that sick/disability benefits are countable as income per *BEH*, §16.5:

10. **Sick Benefits -**

Under *non-MAGI* rules, count Sick benefits received from an insurance policy such as an income continuation policy as unearned income.

Under *MAGI* rules, count sick benefits received from an insurance policy if the individual's employer contributed or paid for the benefit. Do not count the following:

- Reimbursement for medical care;
- Payments for loss of a member or bodily function, or permanent disfigurement; or
- Amounts computed with reference to the injury but not with respect to the individual's absence from work.

Petitioner contends that disability payments from a private insurance carrier are not taxable for Federal income tax purposes and should not, therefore, be counted for purposes of determining BadgerCare+ financial eligibility. This is the IRS treatment of disability insurance income. Payments for sickness or injury, including disability pension payments, are not taxable if the taxpayer paid for the plan. If both the taxpayer and employee paid, only the amount received due to the employer's payments is reported as income. If insurance premiums are paid through a cafeteria plan, the employee is considered to have paid the premiums only if the benefits were included in income. See, e.g., *IRS Publication 525 at 17*. <http://www.irs.gov/pub/irs-pdf/p525.pdf>.

The *BEH* follows the IRS treatment for MAGI cases and this case, again, is a MAGI case. I am, therefore, concluding that if Petitioner paid for the disability insurance with his own after tax income that the \$1000.08 should be excluded from his income for purposes of determining his BadgerCare+ financial eligibility. The problem here is that the record does not contain documentary evidence as to exactly how the premiums were paid for the plan under which Petitioner now receives the disability payments. The

agency will have to obtain that information and make a new determination as to Petitioner's BadgerCare+ eligibility.

CONCLUSIONS OF LAW

1. That disability insurance payments are not taxable income under IRS rules and BadgerCare+ policy so long as the premiums for the plan were paid by the individual with after tax dollars and should not, therefore, be counted as income for purposes of determining BadgerCare+ eligibility for a childless adult.
2. That the record for this hearing does not contain the documentary evidence necessary to demonstrate how the premiums for the plan at issue were paid.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to request verification from Petitioner that demonstrates whether the premiums paid for the disability plan at issue here were made by Petitioner with his own after tax funds or by the employer. If paid for with after tax funds by Petitioner and if he has met all other eligibility criteria BadgerCare+ eligibility must be backdated based on the original application. If not paid for with Petitioner's personal after tax funds the disability insurance income is taxable and included as income for BadgerCare+ purposes thus putting Petitioner's income over BadgerCare+ income limits and this matter is dismissed.

The verification request must be done in writing and within 10 days of the date of this decision and the agency must either certify Petitioner for BadgerCare+ eligibility or deny the application within 10 days of receipt of the requested information. If the requested verification is not submitted by Petitioner within 10 days as requested this matter is dismissed.

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 July, 2014

\sDavid D. Fleming
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.

Washington County Department of Social Services
Division of Health Care Access and Accountability