



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/157414

PRELIMINARY RECITALS

Pursuant to a petition filed May 02, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Vernon County Human Services in regard to Medical Assistance, a telephonic hearing was held on June 25, 2014, at Viroqua, Wisconsin. At the request of the parties, the record was held open for consecutive written closing arguments to the Division of Hearings and Appeals (DHA). Both parties timely submitted their closing arguments to DHA which are received into the hearing record.

The issue for determination is whether the county agency correctly determined that petitioner's child owed a \$10 monthly BadgerCare (BC) premium as of April 1, 2014, due to an increase in household income.

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: Tom Miller, ES Supervisor
Vernon County Human Services
318 Fairlane Drive, Suite 100
Viroqua, WI 54665-6131

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Vernon County who have a BadgerCare (BC) Plus group of two (petitioner and her daughter) under non-MAGI rules.

2. The petitioner had her BC renewal during October, 2013, and non-MAGI rules apply.
3. The petitioner also has a 17 year old South Korean student, [REDACTED] [REDACTED], residing in her household since January, 2014, as part of the Youth Initiative High School's home-stay boarding program. [REDACTED] is attending the Youth Initiative High School as an international boarding student, and has been issued an F-1 student visa for the duration of his time in high school with a goal of graduation in June, 2016.
4. The petitioner provides food, clothing, housing, supervision and guidance for [REDACTED] as a host parent in this Youth Initiative program.
5. The parents of the student send to the petitioner a payment of \$1,300 per month to the petitioner for their [REDACTED] [REDACTED].
6. Petitioner deposits into her bank account the \$1,300 per month from the parents of [REDACTED].
7. The petitioner has a legal interest in the funds in her bank account and those funds are legally "available" to the petitioner. Petitioner is able to use the funds in her bank account for the support and maintenance of her BC household.
8. The petitioner receives monthly self-employment income of \$1,656.25 as an editor, proofreader, and transcriptionist.
9. The petitioner's household's total gross income is \$2,956.25.
10. The petitioner's household income of \$2,956.25 is above the BC limit of \$2,621.66 above which a BC premium is due.
11. The county agency sent a March 12, 2014 Notice of Decision to the petitioner stating that her daughter owed a monthly BadgerCare (BC) premium of \$10 as of April 1, 2014, due to increased household income (including \$1,300 monthly payment from [REDACTED] [REDACTED]'s parents). See Exhibit 1.

DISCUSSION

During the June 25, 2014 hearing and in his closing argument, ES Supervisor Tom Miller clearly established that the monthly payment of \$1,300 from [REDACTED] [REDACTED]'s parents to the petitioner are funds legally available to the petitioner, and must be counted as income to the petitioner. The BadgerCare Eligibility Handbook provides that: "In general, all available income is counted when determining BC+ eligibility who had a filing date prior to February 1, 2014." BadgerCare Eligibility Handbook, sec. 16.1.2 (available income). The petitioner's renewal (filing date) was during October, 2013, and thus this case is reviewed under non-MAGI rules. See Findings of Fact #3 - #7 above. As a result, those funds must be counted as income to the petitioner in determining whether her daughter owes a BC premium as of April, 2014.

In her written closing statement, petitioner argued that if the \$1,300 monthly payment is counted as available income to her BC household, then the county agency should also determine petitioner's BC eligibility and premium as a household of three (including [REDACTED] [REDACTED]). In other words, petitioner argued that if the county counts the \$1,300, then it must for consistency (and because petitioner is paying for [REDACTED]'s expenses) also count [REDACTED] [REDACTED] (even though she admits he is a "non- U.S. citizen and does not qualify for BC) as a third person in her household for purposes of BC calculations and eligibility/premium determinations.

While it is understandable on a logical level petitioner's argument regarding "consistency, such logic is not the relevant legal or policy standard in this case. The BadgerCare Eligibility Handbook provides that for [REDACTED] [REDACTED] to be included as a third person in her BC household he must be both a Wisconsin resident and a U.S. citizen or "qualified immigrant" pursuant to the BadgerCare Eligibility Handbook, sec 2.1, Non-financial program requirements. [REDACTED] is neither a Wisconsin resident, U.S. citizen or a

“qualified immigrant.” Thus, [REDACTED] does not meet the non-financial requirements of BC Handbook, 2.1. As a result, the county agency correctly tested the petitioner’s BC household as a group of two, and not three persons for BC eligibility and premium purposes. Accordingly, based upon the above, I conclude that the county agency correctly determined that petitioner’s child owed a \$10 monthly BadgerCare (BC) premium as of April 1, 2014, due to an increase in household income as a BC group of two.

CONCLUSIONS OF LAW

The county agency correctly determined that petitioner’s child owed a \$10 monthly BadgerCare (BC) premium as of April 1, 2014, due to an increase in household income as a BC group of two.

THEREFORE, it is ORDERED

The petition for review herein be and the same is hereby 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 13th day of August, 2014

\sGary M. Wolkstein
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 August 13, 2014.

Vernon County Human Services
Division of Health Care Access and Accountability