



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/157573

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 13, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Wood County Human Services - WI Rapids in regard to Medical Assistance, a hearing was held on June 10, 2014, at Medford, Wisconsin.

The issue for determination is whether the county agency correctly determined the petitioner's countable income and BadgerCare Plus premium.

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: Beulah Garcia

Wood County Human Services - WI Rapids  
320 West Grand Avenue  
PO Box 8095  
Wisconsin Rapids, WI 54495-8095

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Taylor County.
2. The county agency notified the petitioner on May 5, 2014, that her BadgerCare Plus premium would increase to \$145 per month.

3. The petitioner receives \$400 in regular child support payments each month. She has also received additional child support as compensation for an arrearage. From January through May 2014, she has received the following total monthly payments:
- |              |   |
|--------------|---|
| a. January:  | \$400   |
| b. February: | \$993.06 (includes intercepted income tax refund) |
| c. March:    | \$510.41  |
| d. April:    | \$400   |
| e. May:      | \$400   |
4. The petitioner earns \$2,070 per month.

### DISCUSSION

BadgerCare Plus is Wisconsin's medical assistance program for those who are not elderly or disabled. Wis. Stat. § 49.471. Since April 1, 2014, BadgerCare Plus usually allows adults to be eligible only if their income is below 100% of the federal poverty level; for children, the limit is 300% of the federal poverty level. Wis. Stat. § 49.471(4)(a). However, persons whose earned income, or a combination of earned income and some other countable income, rises from below to above 100% of the federal poverty level are granted a 12-month extension that allows them to remain eligible for the program. *BadgerCare Plus Handbook*, § 18.2. Adults eligible through an extension must pay a premium based upon family size and income if their income exceeds 133% of the federal poverty level. *BadgerCare Plus Handbook*, § 19.2.1. The county agency determined that the petitioner must pay a \$172 premium. She contends that this is incorrect because the agency overstated how much child support she receives.

Child support is countable income for those who received an extension and remain eligible under the BadgerCare Plus rules in effect before April 1, 2014. *BadgerCare Plus Handbook*, § 16.5.2. The petitioner usually receives \$400 per month in child support, but this sometimes varies because her child's father has fallen behind and caught up on his payments. He paid \$993.06 in February 2014 and \$510.41 the next month. The agency averaged the petitioner's child support receipts over a three-month period. It initially began the three-month period in February and determined that she received \$656.48 a month. It later revised this to \$436.80 after averaging March through May 2014. The agency stated that it relied upon FoodShare policy when using the three-month average, although it did not provide a citation to that policy. I assume that the worker has a basis for her contention, but I did not find the policy.

Nevertheless, I did find a relevant statute, regulation, and policy for the petitioner's situation. The BadgerCare Plus statute states: "'Family income' has the meaning given for 'household income' under 42 CFR 435.603 (d)." Wis. Stat. § 49.471(f). The federal regulation cited in that statute states that an "amount received as a lump sum is counted as income only in the month received." 42 CFR § 435.603(d)(1). The federal regulation refers to counting "MAGI-based income," which refers to the new rules guiding medical assistance. The petitioner's eligibility is still being determined under the old rules, but Wis. Stat. § 49.471(f) does not limit when the federal rules must be used. The child support the petitioner received because of the tax intercept and the additional payment can both be reasonably considered lump sums because there is no evidence that these occur regularly. Because the petitioner has received a lump sum in these two months but only a regular \$400 payment in the remaining months, her premium as of June 1, 2014, should be based upon a \$400 monthly child support payment. This is consistent with the intent of the rules because it does not appear that she will receive any more than this in the months for which her eligibility is being determined, making this is the amount that she will have available to contribute toward her healthcare costs.

In addition to the \$400 child support payment, the petitioner earns \$2,070 per month, which brings her total income to \$2,470 per month. She lives with her daughter in a two-person household. The BadgerCare Plus premium for a two-person household with \$2,470 in income is determined by

multiplying that income by 5.4%. *BadgerCare Plus Handbook*, § 48.1. After rounding to the nearest dollar, this puts the petitioner's premium at \$133 per month.

I note to the petitioner that her earned income in this matter is less than the amount attributed to her in her FoodShare appeal because the two programs arrive at monthly income in different ways. The medical assistance program obtains monthly income by multiplying weekly income by four while the FoodShare program multiplies weekly income by 4.3. The average month has 4.3 weeks and not four, which can be seen by dividing the 52 weeks in a year by the 12 months. Why the two programs determine how many weeks are in a month differently, I do not know.

### CONCLUSIONS OF LAW

1. The petitioner's child support income should be based upon the amount that she actually receives in the month for which benefits are being determined.
2. The petitioner must pay a \$133 monthly BadgerCare Plus premium.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it reduce the petitioner's BadgerCare Plus premium to \$133 per month. This action shall be made retroactive to June 1, 2014.

### **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 2nd day of July, 2014

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\sMichael D. O'Brien  
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 2, 2014.

Wood County Human Services - WI Rapids  
Division of Health Care Access and Accountability