



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MGE/158360

PRELIMINARY RECITALS

Pursuant to a petition filed June 13, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance/ BCP, a hearing was held on August 7, 2014, at Madison, Wisconsin.

The issue for determination is whether the Department correctly discontinued the petitioner’s adult BCP effective April 1, 2014, due to excess 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: Tracy Kok, ES Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

[This decision is a duplicate of that issued in case no. 158359. The duplicate is required for DHA’s database.]

1. Petitioner (CARES # ) is a non-disabled adult resident of Dane County.
2. Prior to April 2014, the petitioner received BCP coverage. Her case was due for a periodic review, which she completed on March 31, 2014, with income verification due by April 10, 2014.

3. Upon receiving the income verification, the Department determined that the household was over the new 100% FPL adult BCP income limit. On April 11, 2014, the Department issued written notice to the petitioner, advising that she is no longer eligible for adult BCP effective April 1. Her son JP remained eligible, because children have a higher income limit. The petitioner submitted updated information, which the agency reviewed as a new application, but denied on April 30, 2014. The petitioner appealed.
4. The adjusted gross income relied upon by the Department in its determination was \$1,534.20 monthly. This amount consists of the petitioner's husband's unearned income of \$1,131.00 and the petitioner's earnings of \$403.20. The petitioner is paying off a college loan at the rate of \$45 monthly; the Department did not subtract this repayment from their income.
5. The Department tested the household's income (husband and wife) against the 100% FPL monthly income test for two persons (\$1,310.83). Although the petitioner does not file an income tax return, her husband files a return as "married, filing separately." Because the husband resides with the petitioner, he is included in her BCP income "test group." The Department tested the income eligibility of these adults against the income test for two persons, even though their son lives with them and is a claimed dependent on the husband's tax return.

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, online 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. The income limit for adults went lower effective April 1, 2014: 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, \$1,310.83 for a household of two persons, and \$1,649.17 for three persons in 2014. *Id.*, § 50.1.

The Department calculated gross income for this household of \$1,534.20. From gross income the Department is allowed to subtract only those income tax deductions listed on lines #23 through #35 of the federal 1040 tax return, subject to modifications listed at 42 C.F.R. § 435.603(e). The only applicable deduction identified by the petitioner is her college loan repayment liability (interest portion) of \$45 monthly. That deduction is not enough to pull the household income under the \$1,310 limit for two.

Regarding the size of the household for BCP purposes, the agency correctly pulled the husband in, because he resides with the petitioner. *BCPEH*, 2.3.2.1.

However, it is not clear to me why the Department did not pull the child JP into the income test group. Pertinent portions of the federal code state the following:

(c) For each individual who has submitted an application described in §435.907 or whose eligibility is being renewed in accordance with §435.916 and who meets the non-financial requirements for eligibility ..., the State Medicaid agency must comply with the following—

(1) **The agency must**, promptly and without undue delay consistent with timeliness standards established under §435.912, **furnish Medicaid to each such individual who is**

under age 19, pregnant, or age 19 or older and **under age 65** and not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act, **and whose household income is at or below the applicable modified adjusted gross income standard.**

42 C.F.R. § 435.911(c)(1). The code elsewhere characterizes "household" as follows:

(c) *Basic rule.* Except as specified in paragraph (i), (j), and (k) of this section, the agency must determine financial eligibility for Medicaid based on "household income" as defined in paragraph (d) of this section.

(d) *Household income*—(1) *General rule.* Except as provided in paragraphs (d)(2) through (d)(4) of this section, household income is the sum of the MAGI-based income, as defined in paragraph (e) of this section, of every individual included in the individual's household.

...

(f) *Household*—(1) *Basic rule for taxpayers not claimed as a tax dependent.* In the case of an individual who expects to file a tax return for the taxable year in which an initial determination or renewal of eligibility is being made, and who does not expect to be claimed as a tax dependent by another taxpayer, the household consists of the taxpayer and, subject to paragraph (f)(5) of this section, all persons whom such individual expects to claim as a tax dependent.

(2) *Basic rule for individuals claimed as a tax dependent.* In the case of an individual who expects to be claimed as a tax dependent by another taxpayer for the taxable year in which an initial determination or renewal of eligibility is being made, the household is the household of the taxpayer claiming such individual as a tax dependent, except that the household must be determined in accordance with paragraph (f)(3) of this section in the case of—

(i) Individuals other than a spouse or a biological, adopted, or step child who expect to be claimed as a tax dependent by another taxpayer;

(ii) Individuals under the age specified by the State under paragraph (f)(3)(iv) of this section who expect to be claimed by one parent as a tax dependent and are living with both parents but whose parents do not expect to file a joint tax return; and ...[N/A]

...

(3) *Rules for individuals who neither file a tax return nor are claimed as a tax dependent.* **In the case of individuals who do not expect to file a Federal tax return and do not expect to be claimed as a tax dependent** for the taxable year in which an initial determination or renewal of eligibility is being made, or who are described in paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this section, **the household consists of the individual and, if living with the individual—**

(i) The individual's spouse;

(ii) The individual's natural, adopted and step children under the age specified in paragraph (f)(3)(iv) of this section; and

(iii) In the case of individuals under the age specified in paragraph (f)(3)(iv) of this section, the individual's natural, adopted and step parents and natural, adoptive and step siblings under the age specified in paragraph (f)(3)(iv) of this section.

(iv) The age specified in this paragraph is either of the following, as elected by the agency in the State plan—

(A) Age 19; or

(B) Age 19 or, in the case of full-time students, age 21.

(4) *Married couples.* In the case of a married couple living together, each spouse will be included in the household of the other spouse, regardless of whether they expect to file a

joint tax return under section 6013 of the Code or whether one spouse expects to be claimed as a tax dependent by the other spouse.

[emphasis added]

42 C.F.R. § 435.603(f) (3),(4).

It appears that the petitioner's household income should have been measured against the income limit for three persons (herself, spouse, their minor child). Their income does not exceed the limit for three persons. Therefore, the petitioner's adult BCP should not have been discontinued. Although the petitioner's June 13, 2014 appeal was outside of the 45-day filing period to contest the April 1 closure (notice was given April 11), the agency did review her open case again on April 30, and denied her request that adult BCP be granted. The petitioner's appeal is timely with respect to the April 30 decision, and certification can go back to April 1, 2014.

CONCLUSIONS OF LAW

1. The petitioner's three-person household income does not exceed the relevant limit for BCP eligibility.
2. The Department incorrectly discontinued the petitioner's BCP adult certification.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to certify the petitioner for adult BCP effective April 1, 2014, within 10 days of the date of this Decision.

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 3rd day of September, 2014

\sNancy J. Gagnon
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 September 3, 2014.

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