



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/159467

PRELIMINARY RECITALS

Pursuant to a petition filed July 31, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a telephonic hearing was held on September 10, 2014.

The issue for determination is whether the Department correctly discontinued the petitioner's BCP effective August 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: Pang Thao Xiong, IM Specialist Adv.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. In July 2014 petitioner had a renewal due and completed for BadgerCare Plus. At that time, the agency determined that petitioner's household income was \$3026 for a household of 5.

3. On July 18, 2014, the Department issued written notice to the petitioner, advising that she would cease to be eligible for BCP effective August 1, 2014. The petitioner appealed.

### **DISCUSSION**

BadgerCare Plus is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. Wis. Stat. §49.471; see also *BCP Eligibility Handbook (BCPEH)*, § 1.1, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>. There are financial and nonfinancial requirements one must meet before gaining BCP eligibility. The issue in this case is whether the petitioner meets the financial eligibility tests for the program.

The income limit for parents and caretakers went lower effective April 1, 2014: an eligible applicant cannot have adjusted gross income exceeding 100% of the federal poverty level (FPL). See Operations Memo #13-32 and #14-01. The 100% FPL amount is \$2325.83 monthly for a household of five. *BCPEH* §50.1.

The Department calculated gross income for this household of \$3026. From gross income the Department is allowed to subtract only those income tax deductions listed on lines #3 through #35 of the federal 1040 tax return, subject to modifications listed at 42 C.F.R. § 435.603(e). No applicable deductions were identified by the petitioner or the agency.

The petitioner articulately explained that she has living expenses that make it impossible for her to afford a federal Marketplace insurance policy, even with its premium subsidy. However, I cannot deviate from the legal requirements given above. It is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Thus, the Department's discontinuance of BCP for the petitioner was correct and is sustained here.

### **CONCLUSIONS OF LAW**

The Department correctly discontinued the petitioner's BCP effective August 1, 2014 due to excess income.

**THEREFORE, it is**

**ORDERED**

The petition for review herein 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 14th day of October, 2014

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\sKelly Cochrane  
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 October 14, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability