



FH
[REDACTED]

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

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/159656

PRELIMINARY RECITALS

Pursuant to a petition filed August 5, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Dodge County Department of Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on September 16, 2014.

The issue for determination is whether petitioner is eligible for BadgerCare Plus ["BC+"] MA effective July 1, 2014.

There appeared at that time via telephone 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: Kay K. Brady, ESS II
Dodge County Department of Human Services
143 E. Center Street
Juneau, WI 53039-1371

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 29 years old) is a resident of Dodge County, Wisconsin.

2. Petitioner has a group size of 5 persons (herself; her husband, 3 children).
3. Petitioner's group income is in excess of \$2,325.83 per month (it is approximately \$3,300 per month).
4. Petitioner's is not eligible for BC+ was effective July 1, 2014 because she is over the BC+ income limit.

DISCUSSION

With certain exceptions not applicable here, a person is eligible for BC+¹ only if the countable monthly family income does not exceed 100% of the Federal Poverty Level ["FPL"]. Wis. Stat. § 49.471(4) (2011-12); *BadgerCare Plus Eligibility Handbook* ["BC+EH"] 16.1.1. *Family income* means the total gross earned and unearned income received by all members of a family (except that earnings of children under 18 years of age are disregarded). Wis. Stat. §§ 49.471(1)(f) & 49.471(7)(c)2. (2011-12).

Petitioner does not dispute that she is over income for BC+. Her Family income is over \$3,000 per month. Her Test Group size is 5 persons. The income limit for a Test Group size of 5 persons is \$2,325.83. See , BC+EH 50.1.²

Petitioner testified that she was confused because of notices she received stating that her BC+ would end August 1, 2014 (instead of July 1, 2014).³ She also testified she was told that her BC+ would not stop as long as she faxed in her paystubs (she testified that she did fax in her paystubs). Petitioner's confusion is understandable. These circumstances are unfortunate for petitioner. However, petitioner cannot be eligible for BC+ when her group income is over the BC+ program limit. As an Administrative Law Judge ["ALJ"] I must follow the strict legal requirements of the law. I cannot make an exception based on equitable considerations. In order to do so I would have to exercise equitable powers. ALJ do not possess any equitable powers and must apply the law as it is written.⁴

¹ BC+'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*, § 2.1.5.

² The only allowed deductions from income are the federal income tax deductions used to arrive at Modified Adjusted Gross Income ["MAGI"], with some modifications. See, 42 C.F.R. § 435.603(e) (2012).

³ Petitioner also received an *About Your Benefits* notice dated June 18, 2014 notifying her, correctly, that her BC+ would end July 1, 2014.

⁴ Final Decision Case No. A-40/44630 [Department of Health and Social Services (DHSS) December 30, 1987] adopting Proposed Decision Case No. A-40/44630 [Office of Administrative Hearings (OAH) October 19, 1987]; "An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates. [citation omitted]" *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). "No proposition of law is better established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds." *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944); See also, *Neis v. Education Board of Randolph School*, 128 Wis.2d 309, 314, 381 N.W.2d 614 (Ct. App. 1985). "As a general matter, an administrative agency has only those powers as are expressly conferred or necessarily implied from the statutory provisions under which it operates [citation omitted]". *Brown County v. DHSS Department*, 103 Wis.2d 37, 43, 307 N.W.2d 247 (1981). "An agency or board created by the legislature has only those powers which are expressly or impliedly conferred on it by statute. Such statutes are generally strictly construed to preclude

CONCLUSIONS OF LAW

For the reasons explained above, petitioner is not eligible for BC+ effective July 1, 2014.

NOW, THEREFORE, it is

ORDERED

that 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 1st day of October, 2014

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals

the exercise of power which is not expressly granted. [citation omitted]" *Browne v. Milwaukee Board of School Directors*, 83 Wis.2d 316, 333, 265 N.W.2d 559 (1978).



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 October 1, 2014.

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