FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

BCS/160020

PRELIMINARY RECITALS

Pursuant to a petition filed August 19, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Adams County Health and Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on October 7, 2014, by telephone. A hearing set for September 9, 2014, was rescheduled at the petitioner's request.

The issue for determination is whether discontinuance of the petitioner's BCP was correct.

There appeared at that time the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Amber Taylor, ESSspec.
Adams County Health and Human Services
108 E North Street
Friendship, WI 53934-9443

ADMINISTRATIVE LAW JUDGE:
Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Adams County.
2. The petitioner had an ongoing BCP case as a household of one person. The agency learned of updated unearned income – Social Security benefits – on August 11, 2014. Previously, she had no income. The agency verified the gross Social Security monthly income of $1,377.00.

3. On August 11, 2014, the Department issued written notice to the petitioner advising that her BCP would be discontinued effective September 1, 2014. The basis for discontinuance was increased income. The petitioner timely appealed, and aid was ordered continued pending appeal.

DISCUSSION

BadgerCare Plus is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. The petitioner meets the nonfinancial eligibility tests for the program. The program's financial eligibility standards were changed by state law effective April 1, 2014, to exclude adults with adjusted gross household income exceeding 100% of the federal poverty level (FPL). Wis. Stat. § 49.471(4)(a)4; 2013 Wisconsin Act 116, § 29, for effective date; *BadgerCare Plus Eligibility Handbook (BCPEH)*, § 16.1, online at http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm (viewed in July 2014).

The 100% FPL amount is $972.50 monthly for a household of one person in 2014. *Id.*, § 50.1.

The Department has calculated a gross income amount for the petitioner of $1,377, based on her verified Social Security income. From gross income, the Department is allowed to subtract only those income tax deductions listed on lines #16 - #19 of the federal 1040A tax return (or lines #23-35 on the 1040 return), subject to modifications listed at 42 C.F.R. § 435.603(e). The petitioner did not identify any of these adjusted gross income deductions as being applicable here.

Adjusted gross income for tax purposes does not normally include all of a person's Social Security benefit. However, for BCP purposes, all Social Security income is included:

> (2) *Modified adjusted gross income.* Modified adjusted gross income means adjusted gross income (within the meaning of section 62) increased by—
>
> (i) Amounts excluded from gross income under section 911;
>
> (ii) Tax-exempt interest the taxpayer receives or accrues during the taxable year; and
>
> (iii) Social security benefits (within the meaning of section 86(d)) not included in gross income under section 86.

26 C.F.R. § 1.36B-1(e)(2), cross-referenced from 42 C.F.R. § 435.603(i). *See* also, *BCPEH*, § 16.5, item #3.

Thus, the Department correctly calculated the petitioner's household income to be $1,377, which is over the one-person limit. I cannot deviate from the income requirements established under state law.

CONCLUSIONS OF LAW

1. The petitioner's household income exceeds the relevant limit for adult BCP eligibility.
2. The Department correctly sought to discontinue the petitioner's household's adult BCP certification effective September 1, 2014.

THEREFORE, it is **ORDERED**

That the petition is 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 17th day of November, 2014

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\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 November 17, 2014.

Adams County Health and Human Services
Division of Health Care Access and Accountability