



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/160280

PRELIMINARY RECITALS

Pursuant to a petition filed August 26, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Shawano County Department of Social Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on October 7, 2014, by telephone. The hearing record was held open to October 10, 2014, for submission of the petitioner's most recent federal income tax return; that document was received.

The issue for determination is whether the Department correctly discontinued the petitioner's BCP effective September 1, 2014, due to excess income.

There appeared at that time 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: Debra Marohl, ES Lead Worker
Shawano County Department of Social Services
607 E. Elizabeth Street
Shawano, WI 54166-3105

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Shawano County.

2. The petitioner has an ongoing BCP case as a household of three persons (self, spouse, one child). He reported updated earned income totaling \$2,728 monthly on August 7, 2014. Verification of his increased income (paystubs) was received August 25, and showed pay of \$17.55 hourly, an average of 76.92 hours plus overtime per bi-weekly pay period, and gross monthly income of **\$2,761.36**. The verification was four paystubs from late June, July and early August 2014.
3. On August 8 and August 26, 2014, the Department issued written notices to the petitioner advising that his household's BCP would be discontinued effective September 1, 2014. The basis for discontinuance was increased earned income. The petitioner timely appealed, and aid was continued pending appeal.
4. The petitioner pays out child support of \$600 monthly, but that is not deducted from gross income under the BCP rules revised in 2014. He has identified no deductions from gross income from lines #23 - #35 of a federal 1040 income tax form (or from lines #16-#20 of a 1040A form).
5. The Department tested the household's income against the 100% FPL monthly income test for three persons of \$1,649.17. Because the average income from the summer exceeded the limit, the case was discontinued.
6. The petitioner is a [REDACTED] in the [REDACTED] industry. His highest paychecks are received in the summer, and he expects to be laid off in mid-October 2014. Per his 2013 1040A tax return, the petitioner's household's gross wages and Unemployment Compensation received in 2013 totaled \$23,635. The petitioner is working for the same company in 2014, and expects his 2014 annual income to be similar.

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 October 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 adult 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 monthly gross income for this household of \$2,761.36. 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). No applicable deductions were identified here.

The petitioner argues that he is a [REDACTED], working for the same employer as he did in 2013. His 2013 gross income was \$1,969.58 monthly. Thus, even when his income is looked at over a one-year span, the household income remains too high for the adults to remain on BCP. When the annual average is used, the petitioner's child becomes eligible for BCP; however, BCP coverage for this child was not requested.

The federal insurance Marketplace looks at the prior year's tax filing in deciding whether a person (1) should apply with their state for Medicaid/BadgerCare Plus, or (2) purchase private insurance through the

Marketplace, with a premium subsidy. To avoid the unreasonable result of a state agency saying that a person is not BCP eligible due to short-term income and the Marketplace saying that the person is not eligible for a premium subsidy due to the same income that is averaged over one year, this Judge is quick to review the prior year's tax-reported income. In this instance, the adults are ineligible, based on 2013 income that is anticipated to be repeated in 2014. However, there is a tax difference between 2013 and 2014. The petitioner is the divorced father of two children. Per court order, in 2013, he was allowed to claim both sons in his household, making it a household of four. In 2014, he is only allowed to claim one son in his household, making it a household of three. Claiming the second son is to continue on an alternating year basis. His income is under BCP adult limit for four of \$1,987, but not under the limit for three of \$1,649.

The petitioner's spouse testified that the Marketplace would not allow the adults to purchase subsidized insurance "because their income is too low." I believe this inconsistency is related to both the use of a full year's income and the size of the household for tax purposes.

If the complication of the shifting household size were not present, this case would likely be what the Department is calling a "gap filling" case. A recent operations memo discussed new gap filling procedures:

Unlike MAGI rules, which base eligibility on current monthly income, 36B [federal tax] rules consider annual income when determining an individual's eligibility. As a result, the FFM may find someone to be below 100% FPL based on their annual income, while BC+ may find someone to be above 100% FPL based on their current monthly income. ...

To address this gap between MAGI rules and 36B rules, CMS has indicated that if a state denies someone based on current monthly income above 100% FPL, but the FFM subsequently determines that they are below 100% FPL based on 36B rules, the FFM will send this application to the state as a "gap filling" referral. States are then required to certify applicants for Medicaid .../BC+ based on a monthly equivalent of their expected annual income.

Although CMS has indicated that it is sending gap filling referrals to states, Wisconsin has not received any such referrals to date. However, IM consortia will ... encounter applicants who meet the basic criteria for gap filling. In this situation, IM consortia should contact the CARES Call Center when an individual has applied at the Marketplace and has received a notice indicating that they can purchase health insurance but cannot get an APTC, but has also applied for BC+ and been denied because of monthly income above 100% FPL.

The CARES Call Center will confirm whether the individual meets the criteria for gap filling certification. If so, the CARES Call Center will add a case comment to CWW. EM CAPO will then manually certify the member ...

DHS Operations Memo, #14-41, p.2 (September 24, 2014). I am unclear as to whether the extra element of a shifting tax household size allows this to be treated as a gap filling case. The matter will be remanded to the local agency to contact the Call Center for a gap filling case determination for the adults.

CONCLUSIONS OF LAW

1. The petitioner's three-person household income currently exceeds the relevant limit for adult BCP eligibility.

- 2. The local agency shall contact the CARES Call Center for a review of the BCP adult certification as a gap filling case.

THEREFORE, it is

ORDERED

That the petition is remanded to the local agency with instructions to refer this case to the CARES Call Center for a determination as to whether the adults in this household are BCP eligible as a “gap filling” case. These actions shall be taken within 10 days of the date of this Decision. Also, either the local agency or the Department shall advise the petitioner of the Call Center’s determination in writing.

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 15th day of October, 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 October 15, 2014.

Shawano County Department of Social Services
Division of Health Care Access and Accountability