FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

BCS/160538

PRELIMINARY RECITALS

Pursuant to a petition filed September 08, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Fond du Lac County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on October 29, 2014, at Fond Du Lac, Wisconsin.

The issue for determination is whether the county agency correctly discontinued the petitioner's BadgerCare Plus eligibility effective August 1, 2014, due to household income above the 100% MAGI income limit of $1,310.83 for a group of two.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Deborah Bohlman, ESS
Fond du Lac County Department of Social Services
50 N. Portland Street
Fond du Lac, WI 54935

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Fond Du Lac County who currently resides with her husband, [redacted].
2. The petitioner received BadgerCare (BC) Plus benefits for a household of one through June, 2014.

3. The petitioner receives a monthly pension of $123.30.
4. On July 1, 2014, petitioner reported to the county agency that her husband, [redacted] was now residing in her household. See Exhibit 1.
5. [redacted] receives gross monthly Social Security of $1,277.00.
6. The county agency sent a July 10, 2014 Notice of Decision to the petitioner stating that effective August 1, 2014 her BadgerCare (BC) Plus eligibility would discontinue due to household income of $1,400.30 which is above the 100% FPL of $1,310.83 for a household of two per BadgerCare Plus Eligibility Handbook, 16.1.1, "Income Limits. See Exhibit 2.

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. 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, and **$1,310.83** for a household of two persons in 2014. *Id.*, § 50.1.

The petitioner did not dispute her monthly earned income calculated by the county agency. While petitioner's husband does pay monthly child support of $504.90, Social Security rules require gross income to be included in the budget in determining BC income eligibility. 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, subject to modifications listed at 42 C.F.R. § 435.603(e). The petitioner was unable to identify any of these adjusted gross income deductions as being applicable in this case. The petitioner was unable to refute that her countable household income for herself and her husband did exceed 100% FPL as of August, 2014 for a household of two persons. Accordingly, based upon the above, I must conclude that the county agency correctly discontinued the petitioner's BadgerCare Plus eligibility effective August 1, 2014, due to household's income above the 100% MAGI income limit of $1,310.83 for a group of two.

CONCLUSIONS OF LAW

1. The petitioner's household income does exceed the relevant 100% MAGI FPL limit for BCP eligibility for a household of two.

2. The county agency correctly discontinued the petitioner's BadgerCare Plus eligibility effective August 1, 2014, due to household income above the 100% MAGI income limit of $1,310.83 for a group of two.

THEREFORE, it is **ORDERED**

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 December, 2014.

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\sGary M. Wolkstein
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 December 1, 2014.

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