



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

BCS/162049

PRELIMINARY RECITALS

Pursuant to a petition filed November 19, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Jefferson County Department of Human Services in regard to Medical Assistance/BadgerCare Plus (BCP), a hearing was held on January 14, 2015, at Jefferson, Wisconsin. The hearing record was held open for a submission from the petitioner, which was received.

The issue for determination is whether the Department correctly denied the petitioner's September 2014 BCP application due to excess income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Redact ES Worker
Jefferson County Department of Human Services
Workforce Development Center
874 Collins Rd.
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Jefferson County.
2. The petitioner applied for BCP on September 30, 2014.

3. On October 30, 2014, the Department issued written notice to the petitioner, advising that the petitioner was not eligible for BCP effective April 1, 2014, due to excess income. Her minor child is disabled and receives Medicaid as an SSI recipient. The petitioner appealed.
4. The petitioner's household consists of herself and the disabled minor child. The child is the petitioner's tax dependent, and the child is not expected to be required to file a 2014 tax return. The child receives \$1,382 in Social Security benefits, which are not included for BCP purposes.
5. The adjusted monthly gross income relied upon by the Department in its determination was \$1,382 in Social Security survivor's benefits.

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

The petitioner has a minor child who resides with her and is expected to be her tax dependent. Because the child is "not expected to be required to file a tax return" for 2014, the child's income is not counted towards the petitioner's household income for BCP eligibility. *BCPEH*, §16.1.3.

The Department has calculated a gross income amount for the petitioner of \$1,382, based on the adult's 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).

Although the parties agree that the petitioner receives gross Social Security income of \$1,382 for herself, the petitioner argues that her gross income was not correctly determined. 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. The above-referenced section 911 refers to income earned outside of the United States, and is not applicable here. *See*, 26 U.S.C. § 911.

The petitioner had a \$3,000 capital loss on her 2013 tax return, and expects the same for 2014. She submitted a 2013 Form 1040 *Capital Loss Carryover Worksheet* in support of that expectation. Per *BCPEH*, § 16.5, item #15, “personal capital losses can be used to offset the individual’s other income types.” Thus, \$250 (\$3,000 divided by 12) should be subtracted from the petitioner’s gross income in this eligibility determination.

Also, the petitioner shows a subtraction of \$13,123.00 for Net Operating Loss on 2013 Form 1040 line 21 of her gross income computation. The \$13,123 will not be subtracted from the petitioner’s annual income because the Net Operating Loss (NOL) was not explained at hearing, and that line entry does not mean that the NOL will be the same for 2014. *E.g.*, the NOL could have been used up on the 2013 return.

An NOL occurs when a person’s deductions for the year are more than his/her income for the year. An NOL year is the year in which an NOL occurs. A person can use an NOL by deducting it from his/her income in another year or years, until it is used up. The NOL can be used up going forward (the carryforward period) for up to twenty years. *See*, IRS Publication 536. In this case, the petitioner did not supply the NOL Statement referenced on line 21 of her 2013 return. No other documentation was submitted showing NOL carryforward for 2014. Thus, this Judge has no way of knowing the amount of the projected NOL carryover. Based on this record, a NOL amount cannot be subtracted from the petitioner’s 2014 income.

Thus, the petitioner’s monthly household income should be calculated as $\$1,382 - 250 = \$1,132$, which is under the two-person limit of \$1,310. The petitioner’s September 2014 application was therefore incorrectly denied due to excess income.

CONCLUSIONS OF LAW

1. The petitioner’s household income, after subtraction of capital gains losses, did not exceed the two-person household limit for adult BCP eligibility.

THEREFORE, it is

ORDERED

That the petition is *remanded* to the county agency with instructions to continue the processing of the petitioner’s September 30, 2014, adult BCP application in accord with the Conclusion of Law above. This action shall be taken within 10 days of the date of this Decision.

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 13th day of February, 2015

\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 February 13, 2015.

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