



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/162082

PRELIMINARY RECITALS

Pursuant to a petition filed November 18, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on December 16, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly terminated the Petitioner’s BadgerCare+ benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Pang Thao-Xiong, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. On October 14, 2014, the agency received information that the Petitioner’s Unemployment Insurance Benefits were going to be ending, because he obtained employment. (Exhibit 3, pg. 8)

3. On October 15, 2014, the agency sent the Petitioner a notice of proof needed requesting verification of his earned income. The verification was due October 24, 2013. (Exhibit 3, pgs. 23-24)
4. On October 23, 2014, the Petitioner provided two, bi-weekly paystubs. The first was dated October 10, 2014 and reflected gross income in the amount of \$915.00. The second was dated October 24, 2014 and reflected gross income, in the amount of \$992.00. The paystubs did not reflect any pre-tax deductions, other than for income taxes, Social Security and Medicare. (Exhibit 3, pg. 16)
5. The Petitioner also provided an Employer Verification of Earnings form indicating the Petitioner works an average of 20 hours per week at \$16.00 per hour. (Exhibit 3, pg. 17)
6. On October 27, 2014, the agency sent the Petitioner a notice, indicating that his health care benefits would be ending effective December 1, 2014, because his income was over the program limit. (Exhibit 3, pgs. 29-32)
7. The Petitioner filed a request for fair hearing that was received November 18, 2014. (Exhibit 1)
8. Petitioner's tax filing status is single. (Exhibit 3, pg. 20)
9. At the hearing, the Petitioner provided another paystub dated December 5, 2014, reflecting year to date gross earnings as \$11,649.00. This works out to be monthly income of: $\$11,649 \div 11.5 \text{ months} = \1012.95 . (Exhibit 2)

DISCUSSION

BadgerCare Plus (BC+) is a state/federal program that provides health coverage for Wisconsin families. *BadgerCare + Eligibility Handbook (BEH) §1.1.1.*

Effective April 1, 2014, an adult must have household income below 100% the Federal Poverty Level, in order to be eligible for the BadgerCare+ health plan and all available gross income must be counted. *BEH §16.1* 100% of FPL for an assistance group size of one is \$972.50. *BEH §50.1.*

For BadgerCare+ purposes, only actual gross monthly income is used. Estimated amounts using the 4.3 weekly pay period or 2.15 bi-weekly pay period multipliers are NOT used. *Process Help §16.4.1*; see also *Ops Memo 01-01*

It is the agency's contention that Petitioner's household income exceeds 100% of the Federal Poverty Level and as such, he is not eligible for benefits. The Petitioner argues that the October 2014 paychecks were an aberration and that if one averages his income his monthly income over the year, it is lower than the agency's calculation of his income.

I. PETITIONER'S INCOME

Petitioner is correct that averaging his income over the year yields a lower monthly income. However, no matter how one calculates the Petitioner's income, he still appears to be over the 100% FPL income limit of \$972.50 per month.

According to the EVFE submitted by Petitioner in October 2014, his monthly income works out to be:

$$20 \text{ hours per week} \times \$16.00 \text{ per hours} \times 4 \text{ weeks per month} = \$1280.00 \text{ per month.}$$

According to Petitioner's October pay stubs he earns:

$$\$915.00 + \$992.00 = \$1907.00 \text{ per month}$$

According to Petitioner's year-to-date income on the December 5, 2014 paystub, he earned:

$$\$11,649 \div 11.5 \text{ months} = \$1012.95 \text{ per month}$$

All three calculations yield monthly income that exceeds the \$972.50 - 100% FPL income limit. As such, it is found that the agency correctly ended the Petitioner's BadgerCare+ benefits, effective December 1, 2014.

II. GAP FILLING

The Petitioner argues that he does not make enough money to get health insurance in the Federally Facilitated Marketplace (the Marketplace).

Because the manner in which income is counted for the Marketplace is different that the manner which income is counted for BadgerCare+ purposes, sometimes individuals fall between the cracks. According to Ops Memo 14-41, issued on January 1, 2014, the Centers for Medicaid and Medicare directed states to create a procedure for filling the gap created by individuals who otherwise do not make enough money to obtain health insurance from the Market Place and are turned away, but who also do not qualify for BadgerCare+ benefits, because they were determined to be over the income limit. *See also BEH §16.1.4*

The Wisconsin Department of Health Services directed Income Maintenance workers to contact the CARES call center when they encounter an individual that has both been turned away from the Marketplace and been found ineligible for BadgerCare+. (Ops Memo 14-41, pg. 2) The call center will then provide confirmation that the individual meets the criteria for gap filling certification and the person will be allowed to enroll in BadgerCare+. (Id.) However, "because the Marketplace considers annual income on a calendar-year basis, the manual gap-filling certification will last until the end of the calendar year." (Ops Memo 14-41, pg. 2) *See also BEH §16.1.4*

In the case at hand, there is no indication that the Petitioner was turned away from the Marketplace. As such, the agency cannot yet re-open the Petitioner's BadgerCare+ case under a gap-filling certification.

Petitioner must apply for insurance through the Marketplace and obtain a denial of coverage. Once Petitioner obtains a denial from the Marketplace, he must then contact the agency to seek gap filling certification.

CONCLUSIONS OF LAW

The agency correctly terminated the Petitioner's BadgerCare+ benefits, effective December 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 Milwaukee,
Wisconsin, this 22nd day of January, 2015.

\sMayumi M. Ishii
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 January 22, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability