



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/162963

PRELIMINARY RECITALS

Pursuant to a petition filed December 30, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on January 21, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly discontinued the petitioner's BCP effective February 1, 2015, due to excess income.

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: Belinda Bridges, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. Prior to February 2015, the petitioner was a BCP household of one (childless adult).
3. The petitioner's case was reviewed in December 2014. The Department determined that she continued to be eligible, based on gross monthly income of \$854.40 from [redacted].

Verification of income from a second possible employer, [REDACTED], was requested via a notice dated December 15, 2014 (verification due 12/24/2014). On December 29, 2014, the Department notified the petitioner that her BCP would end February 1, 2015. The basis for closure was failure to verify the [REDACTED] income.

4. On December 30, 2014, the petitioner appeared at the agency and verified that she was no longer working at [REDACTED]. At the same time, the petitioner presented four updated paystubs from [REDACTED]. These stubs supported a gross income calculation that put the petitioner over the BCP income limit for one person of \$972.50.
5. The Department then took the position that the petitioner's BCP case would remain closed for February 2015, due to excess income. The petitioner appealed.
6. The adjusted gross income relied upon by the Department in its determination of ineligibility was \$1,339 from [REDACTED]. The petitioner has variable hours. At hearing, she produced her [REDACTED] paystubs dated December 26, 2015, January 3, January 9, and January 16, 2015. They showed gross earnings of \$356.00, \$142.40, \$284.80, and \$142.40. The total of \$925.60 is under the BCP limit. Post-hearing, the agency indicated that the petitioner's BCP case would be reopened for February 1, 2015, forward.

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 Department has calculated a gross income amount for the petitioner based on the average of submitted paystubs. From gross income, the Department is allowed to subtract only those income tax deductions listed on lines #23 - #35 of the federal 1040 tax 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.

After being presented with updated paystubs, the agency agrees that the petitioner is currently under the BCP limit, and that her case should be reopened.

CONCLUSIONS OF LAW

1. The petitioner's household income does not exceed the relevant limit for BCP eligibility.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to certify the petitioner for BCP (childless adult) effective February 1, 2015, within 10 days of the date of this Decision, if it has not already done so.

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 27th 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 27, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability