



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/163220

PRELIMINARY RECITALS

Pursuant to a petition filed January 12, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on February 17, 2015, at Eau Claire, Wisconsin.

The issue for determination is whether the county agency correctly ended BadgerCare Plus for the petitioner's child on December 1, 2014, because an employer pays at least 80% of a health insurance premium.

There appeared at that time and place 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: Mary Myers

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.

2. The petitioner's household can be covered by health insurance in which an employer pays at least 80% of the premium.
3. There are four persons in the petitioner's household. They include her husband and her two children, who are four and 14 years old.
4. The petitioner's gross monthly household income is \$4,198.90 per month.
5. The federal poverty level for a four-person household is \$1,987.50. *BadgerCare Plus Handbook*, § 50.1.

DISCUSSION

The petitioner seeks BadgerCare Plus for her four-year-old child. BadgerCare Plus is Wisconsin's Medicaid program for those who are not elderly, blind, or disabled. Wis. Stat. § 49.471. The county agency denied her request because her household has access to health insurance through an employer who pays at least 80% of the premium and its income is too high. The petitioner contends that this rule does apply to her child because there is a higher income limit that exempts younger children from using employer-subsidized insurance.

Generally, adults are ineligible for BadgerCare Plus if their household's income exceeds 100% of the federal poverty level and children are ineligible if it exceeds 300% of the federal poverty level. Wis. Stat. § 49.471(4)(a). The federal poverty level for a four-person household, the size of the petitioner's, is \$1,987.50. *BadgerCare Plus Handbook*, § 50.1. The petitioner's gross monthly household income is \$4,198.90 per month, which at 211% of the federal poverty level is over the limit for adults but under the limit for children.

But the program's rules also limit coverage to those with access to insurance. These rules derive their authority from an interminable maze of statutory sections and subsections, with one referring to another, which refers to yet another that may provide an exception, only to find that another section limits the exception. And to add to the confusion, the law retains language that no longer applies directly to any situation. Thus, Wis. Stat. § 49.471(8)(cg) states that persons over 18 are not eligible for BadgerCare Plus if they have access to insurance if their income exceeds 133% of the federal poverty level, even though no adult is eligible if his income exceeds 100% of the federal poverty level. And even though this section applies specifically to those over 18, Wis. Stat. § 49.471(cr)1a states that a person is not eligible if subsection (cg) applies to it and the person is a child. Section 49.471(8)(d)1 states that persons are not ineligible for BadgerCare Plus because of insurance if the person is a child described in "(4)(a) 2. or 2m." Those subsections state:

2. A child who is under one year of age, whose mother was, on the day the child was born, eligible for and receiving medical assistance under subd. [1.](#) or [5.](#) or s. [49.46](#) or [49.47](#), and who lives with his or her mother in this state.
- 2m. A child who is under one year of age, whose mother was determined to be eligible under subd. [1g.](#), and who lives with his or her mother in this state.

After ricocheting about, one eventually comes to a section that indicates that children under a year old are presumed to be eligible for benefits if the household's income does not exceed 300% of the federal poverty level, those between one and six years old are presumed to be eligible if the income does not exceed 185% of the federal poverty level, and those between six and 19 are presumed to be eligible if the income does not exceed 150% of the federal poverty level. These income limits only apply if the federal government rejects the department's request to deny coverage to children during the period in question. Wis. Stat. § 49.471(5)(b)2.

The *BadgerCare Plus Handbook* provides the department's interpretation and explanation of BadgerCare Plus laws. Although policies usually do not have the same legal force as statutes and administrative code provisions, BadgerCare Plus statutes have been written to give the department a great deal of discretion. Based upon that and the general incoherence of the statute, I will rely on the policies found in that manual. Those policies set the income limits for those with access to insurance in which an employer pays at least 80% of the policy's premiums. See *BadgerCare Plus Handbook*, § 7.3.2. In most of the current situations, if the child is at least one but less than six, the limit is 191% of the federal poverty level; if the child is at least six but less than 19, the limit is 156% of the federal poverty level. *BadgerCare Plus Handbook*, § 7.1.2. However, some households that have been eligible under old rules are covered by different standards. For them, the income limit is 185% of the federal poverty level for the younger set of children and 150% for the older set. This second set of figures mirrors the statute and apparently what the agency depended upon to determine the eligibility of the petitioner's child.

These laws and policies show that the petitioner correctly argues that there is a lower income limit for younger children. Unfortunately, her child still is not eligible because her household income, at 211% of the federal poverty level, exceeds 191% of the federal poverty level, the highest possible level for any child over one year old. Therefore, I must uphold the agency's decision to end her child's eligibility for the BadgerCare Plus.

CONCLUSIONS OF LAW

The county agency correctly determined that the petitioner's younger child is ineligible for BadgerCare Plus because her household has access to health insurance whose premiums are subsidized by an employer and its income exceeds the program's limit for allowing child that age to be exempt from being covered by that insurance.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 Madison,
Wisconsin, this 12th day of March, 2015

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 12, 2015.

Eau Claire County Department of Human Services
Division of Health Care Access and Accountability