



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

MGE/163464

**PRELIMINARY RECITALS**

Pursuant to a petition filed January 22, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on February 17, 2015, at Waukesha, Wisconsin.

There remains no issue for determination.

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: Kathleen Jones

Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # ) is a resident of Waukesha County.
2. The petitioner was receiving and qualified for health care coverage through BadgerCare (BC) Plus.
3. The petitioner became eligible for social security retirement when he turned 65. The petitioner originally opted to wait to his full retirement age to collect his social security. The social security

income available to the petitioner was \$2,079.00 per month. The petitioner has now opted to begin receiving this income in March 2015.

4. On January 9, 2015 the agency sent the petitioner a notice stating that effective February 1, 2015 he was no longer enrolled in a health care plan because either his income was over the program limits or he had access to other health care coverage. That notice included the petitioner's social security income for March 2015.
5. On January 21, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.
6. At the hearing, the agency representative stated that the petitioner's health insurance coverage would terminate effective March 1, 2015, not February 1, 2015. The petitioner agreed that his social security income was to start in March 2015, and that effective March 1, 2015 he would no longer be eligible.

### **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, at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (viewed in September 2014). The petitioner meets the nonfinancial eligibility tests for the program.

The petitioner must also pass an income test. All available income is counted. (*BCPEH*), § 15.1.5. Income is available with it is actually available or when a person has a legal interest in it and the person has to legal ability to make it available for support and maintenance. *Id.*

In order to qualify for BC Plus 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, and \$1,649.17 for a household of three persons in 2014. *Id.*, § 50.1.

In this case the original issue was whether the petitioner's social security benefits that he was opting not to take was considered income. The petitioner turned 65 in July, but opted not to take his social security. In January the agency learned that the petitioner was eligible for social security. The agency originally sought to dis-enroll the petitioner from BadgerCare effective February 1, 2015. At the hearing, the agency represented that the petitioner's BadgerCare coverage would continue until March 1, 2015. The petitioner agreed that assuming that were the case, there was no issue for determination. As soon as the petitioner learned that he would no longer remain eligible for BadgerCare Plus if he did not take his social security, he opted to begin receiving his social security. The first month that he will receive this income is March 2015. The agency agreed that the petitioner's BadgerCare Plus benefits would terminate March 1, 2015. The petitioner was in agreement with that decision as that is when his social security income would begin. For these reasons, there remains no issue for determination at this time.

I note that at the hearing, the agency stated that there was a faxed notice stating the petitioner was eligible for BadgerCare Plus until March 1, 2015. I was not able to find that particular notice in the faxed documents. Nonetheless, I find the agency's testimony credible, and this appeal appears to have been resolved.

### **CONCLUSIONS OF LAW**

There remains no issue for determination.

**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 17th day of March, 2015

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\sCorinne Balter  
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 March 17, 2015.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability