



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/163799

PRELIMINARY RECITALS

Pursuant to a petition filed February 04, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a hearing was held on April 15, 2015, at Black River Falls, Wisconsin.

The issue for determination is whether payments the petitioner receives to equalize the property division in her divorce count as income when determining her BadgerCare Plus 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: [Redacted]

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Jackson County.
2. The petitioner is unemployed. She receives \$1,500 per month from her former husband as part of her divorce settlement to equalize the division of their property. Exhibit 1.

3. The petitioner lives alone.
4. The county agency notified the petitioner on January 14, 2015, that her BadgerCare Plus would end on February 1, 2015, because her income exceeded the federal poverty level.

DISCUSSION

The county agency seeks to end the petitioner's BadgerCare Plus benefits because it contends that the \$1,500 monthly payments she receives from her former husband as part of her divorce settlement puts her over the program's income limit. BadgerCare Plus is Wisconsin's version of medical assistance for those who are not elderly or disabled. A recipient's household income cannot exceed the federal poverty level. Wis. Stat. § 49.471(4)(a); *BadgerCare Plus Handbook*, § 16.1. For those like the petitioner who live alone, the federal poverty level is \$980.83. *BadgerCare Plus Handbook*, § 50.1. The petitioner contends that because she receives the payments to equalize her marital property they are not income. She has no other income, so if her argument is correct, she remains eligible for BadgerCare Plus.

The *BadgerCare Plus Handbook*, § 16.2.37, clearly states that these payments are not income: "Money received as a property settlement is always an asset, regardless of whether it is paid in one payment or installments. It is never income." The county agency, which originally believed that the payments were support payments, now acknowledges that they are part of the petitioner's property settlement and thus do not count against her income limit. Therefore, she remains eligible for BadgerCare Plus.

CONCLUSIONS OF LAW

1. The money the petitioner receives from her former husband as part of the property division in their divorce does not count as income when determining her BadgerCare Plus benefits.
2. The petitioner remains eligible for BadgerCare Plus because her income is less than the federal poverty level.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it reinstate the petitioner into the BadgerCare Plus program retroactive to February 1, 2015.

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 29th day of April, 2015

\sMichael D. O'Brien
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 April 29, 2015.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability