



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/164447

PRELIMINARY RECITALS

Pursuant to a petition filed March 03, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance (MA), a telephonic hearing was held on April 02, 2015, at Kenosha, Wisconsin.

The issue for determination is whether the agency correctly discontinued the petitioner's BadgerCare Plus (BCP) effective February 1, 2015, due to excess income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Karen Mayer, Fair Hearing Coordinator
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County. She has been receiving BCP as an assistance group of 3 (herself, mother and father).

2. On January 16, 2015 petitioner had a renewal for MA. The agency determined the household's monthly gross income to be \$5890.
3. Petitioner's MA eligibility was recalculated with her father's income and on February 4, 2015 the agency issued a notice of decision to petitioner stating that her BCP would end March 1, 2015 due to the increase in household income.

DISCUSSION

BadgerCare Plus is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. The petitioner must pass an income test to be eligible for BCP. The household income for adults, parents or caretakers must be at or below 100% of the Federal Poverty Level (FPL), and children and pregnant women must be at or below 300% of the FPL. See *BadgerCare Plus Eligibility Handbook (BCPEH)*, §1.1.2, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

The agency determined the household's income pursuant to the policy set forth in the *BCPEH*. The *BCPEH* states that beginning in February 1, 2014, BCP eligibility determinations will use Modified Adjusted Gross Income (MAGI) rules. MAGI rules are based on an individual's tax household, not necessarily on the physical household or family relationships. The agency determined petitioner's monthly gross income to be \$5890 as a household of 3. From gross income the Department is allowed to subtract only those income tax deductions listed on lines #23 through #35 of the federal 1040 tax return, subject to modifications listed at 42 C.F.R. §435.603(e). No applicable deductions were identified here. The 300% FPL limit for a household of three is \$5122.95.

The petitioner did not disagree with the income determined for their family and I find no errors in the calculation. However, the petitioner did raise the question of how to deal with the fluctuation in the income, and that the income budgeted in this instance was not a regular occurrence as this included an atypical bonus. The petitioner was reminded to continue with the separate MA application pending before the agency, which would include a different timeframe under which to look at the income.

Based on the information before me, I must find that the agency correctly calculated the petitioner's household income, which is over the BCP eligibility limit. While I understand this may seem unfair, I cannot deviate from the income requirements established under state law.

CONCLUSIONS OF LAW

The agency correctly discontinued the petitioner's BCP effective February 1, 2015, due to excess income.

THEREFORE, it is

ORDERED

The petition for review herein 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 13th day of May, 2015

\sKelly Cochrane
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 May 13, 2015.

Kenosha County Human Service Department
Division of Health Care Access and Accountability