



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

BCS/164616

PRELIMINARY RECITALS

Pursuant to a petition filed March 13, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on April 15, 2015, at Madison, Wisconsin.

The issue for determination is whether the respondent correctly terminated petitioner's BadgerCare Plus benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Dane County, and at all times material hereto, petitioner resided with his spouse.

2. On March 17, 2014, petitioner filed a BadgerCare Plus (BC+) application seeking benefits. His application was approved effective April 1, 2014.
3. Subsequently, at the time of his renewal, petitioner reported that his wife was employed; this had not been reported initially.
4. Respondent determined that petitioner's test group included petitioner and his wife; effective March 3, 2015, petitioner's case was updated and failed due to income in excess of program rules.

### DISCUSSION

Effective April 1, 2014, the governor and legislature lowered the amount of adjusted gross income a household can have and still be eligible for benefits to 100% of the federal poverty level for adults and 300% for children. Wis. Stat. § 49.471(4)(a). For a two-person household, the size of the petitioner's, the federal poverty level is \$1,327.50 per month. *BadgerCare Plus Handbook*, § 50.1. As shown, the petitioner's income is \$2,466.61. Because this exceeds the poverty level, his household is not eligible for benefits.

The Department's BC+ policy states as follows:

All MAGI groups are based on a "target" individual. Each person who can become eligible for BC+ on the application will be a target during the eligibility determination for a case.

#### Tax Filers

If the individual is a tax filer and is NOT being claimed as a dependent by anyone else, then the individual's MAGI group consists of the tax filer, the tax filer's spouse, and any dependents the tax filer is claiming.

#### Out-of-the-Home Tax Dependents

A tax filer is able to claim individuals who live outside of their home as their tax dependents. Common examples include college students and other adult children, elderly parents, or siblings who do not live with the filer(s). Tax filers can also claim a deceased child as his or her tax dependent in the year that the child has died. In these instances, the deceased child would be included in the tax filer's group size, though the child would not be eligible for benefits on that application.

#### Deceased Co-Filers

It is possible for an individual to file his or her taxes jointly with a deceased spouse for the taxable year in which the spouse died. However, unlike deceased tax dependents, they will not be included as a household member.

#### Household Members in the Military

Deployed military members are still considered part of a tax household. Under MAGI rules, the military member's taxable income will count in the household, and he or she will also be included in the household's group size, as appropriate. If a household member is absent due to military activity, he or she may be included in the group size, but will not be eligible for assistance on this case.

#### Married Couples

Married individuals who are living together are always included in each other's group size, even if they are filing taxes separately. If a married couple is living apart but filing

jointly, the couple is included in each other's group size. If the married couple is living apart and filing taxes separately, or are not planning to file taxes, do not include them in each other's group size.

*BEH* § 2.3.1.1.

In order to determine financial eligibility for BadgerCare Plus the respondent must first determine who is in the BadgerCare+ test group. Petitioner is married and lives with his wife. They file joint taxes. Under Badgercare Plus married individuals who are living together are always included in each other's group size. *BEH*, § 2.3.2.1. Further, the earned income of all household test group members over age 18 must be counted for the purpose of determining eligibility and premiums. *BEH*, §16.1.

Petitioner did not raise an issue as to the household income calculated by the respondent. Instead, he argued that his wife's income is not available to him to spend on healthcare. He stated that he could be covered under his wife's employer's health plan, but maintained that it is not affordable.

Petitioner's arguments miss the mark. Because petitioner is married, files joint taxes, and resides with his spouse, his spouse's income is included in the determination of petitioner's household income for eligibility purposes. Based on that income, the respondent determined that petitioner is not eligible due to income exceeding program limits. Whether or not coverage through his wife's employer is affordable is not a factor in determining eligibility.

Based upon the foregoing and the record in this matter, I find that the respondent properly included petitioner's wife's income in determining BC+ eligibility. I note to petitioner that I have no equitable powers that would allow me to consider the fairness of the situation and must apply the law as it is written. Whether health care benefits are affordable is not a determination that I can make. Therefore, I must find that the respondent correctly determined the petitioner's household income in accordance with BadgerCare Plus regulations.

### **CONCLUSIONS OF LAW**

The county correctly budgeted the income of petitioner's wife in determining petitioner's eligibility for BadgerCare Plus benefits.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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 May, 2015.

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\sPeter McCombs  
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 12, 2015.

Dane County Department of Human Services  
Division of Health Care Access and Accountability