



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/165103

PRELIMINARY RECITALS

Pursuant to a petition filed April 03, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on April 28, 2015, at Oshkosh, Wisconsin.

The issue for determination is whether the agency correctly discontinued petitioner’s MA effective April 1, 2015 due to excess income.

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: Jeanie Ortiz, ESS

Winnebago County Department of Human Services  
220 Washington Ave.  
PO Box 2187  
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Kelly Cochran  
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Winnebago County.
2. Petitioner’s 4-person household underwent an MA review in March 2015 and the agency budgeted the countable household income. On April 2, 2015 the agency issued a notice of

decision stating that effective April 1, 2015 her MA would end. This was due to the household's gross monthly income that increased. The other adult in the home was not receiving or requesting MA; children remained eligible.

3. The petitioner's countable monthly income was determined to be \$2229.82.

### **DISCUSSION**

BadgerCare Plus (BC+) is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. The petitioner meets the nonfinancial eligibility tests for the program. The program's financial eligibility standards were changed by state law effective April 1, 2014, to exclude adults with adjusted gross household income exceeding 100% of the federal poverty level (FPL). Wis. Stat. § 49.471(4)(a)4; 2013 Wisconsin Act 116, §29, for effective date; *BadgerCare Plus Eligibility Handbook (BCPEH)*, §16.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

The 100% FPL amount is \$2020.83 monthly for a household of four. *Id.*, §50.1. The Department has calculated a gross income amount for the petitioner of \$2229.82, based on the adults' verified income. From gross income, the Department is allowed to subtract only those income tax deductions listed on lines #16 - #19 of the federal 1040A tax return (or lines #23-35 on the 1040 return), subject to modifications listed at 42 C.F.R. § 435.603(e). The petitioner did not identify any of these adjusted gross income deductions as being applicable here.

I have reviewed the agency's evidence and have found no errors, and the petitioner has identified none. Based on the foregoing, I find the Department correctly calculated the petitioner's household income, which is over the four-person limit. The petitioner agreed that she understood she can always reapply if their income changes. I cannot deviate from the income requirements established under state law.

I add that the petitioner can also apply to the Federally Facilitated Marketplace (also known as the Exchange or FFM). The FFM offers private health insurance to individuals and families, as well as Advance Premium Tax Credits (APTCs). These tax credits lower premium payments for people between 100% and 400% of the FPL who are not eligible for BC+ MA, if they purchase private health insurance through the Marketplace. While current BC+ MAGI rules base eligibility on current monthly income, the FFM uses prospective annual income under "36B rules" to determine eligibility for a FFM subsidy. Thus, I also add that it is possible that a person could be below 100% of the FPL for subsidy purposes, but above 100% for BC+ purposes. To address this gap between MAGI rules and 36B rules, CMS has indicated that if a state denies someone based on current monthly income above 100% FPL, but the FFM subsequently determines that they are below 100% FPL based on 36B rules, the FFM will send this application to the state as a "gap filling" referral. States are then required to certify applicants for MA based on a monthly equivalent of their expected annual income. The whole point of gap filling is to catch individuals whose recent income is too high for BC+, but whose expected income will make them ineligible for Marketplace subsidies.

### **CONCLUSIONS OF LAW**

The agency correctly discontinued petitioner's MA effective April 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 20th day of May, 2015

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\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 20, 2015.

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