



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

BCS/165801

PRELIMINARY RECITALS

Pursuant to a petition filed May 1, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Wisconsin Department of Health Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on June 2, 2015, by telephone. The hearing record was held open for petitioner's submission of his 2014 federal income tax return, which was received.

The issue for determination is whether the Department correctly discontinued the petitioner's BCP application due to excess income.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact, ES Spec.
La Crosse County Department of Human Services,
& Western Consortium
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Clark County.

2. The petitioner has an ongoing BCP case as a household of one person. In March 2015, he reported that he had returned to seasonal work at 40 hours weekly, \$9.75 per hour. This multiplies out to \$1,560 in monthly gross income. Verification of his increased income was received from the employer, showing slightly fewer hours, and total monthly gross of \$1,520.
3. On April 13, 2015, the Department mailed written notice to the petitioner advising that his BCP would be discontinued effective May 1, 2015. The basis for discontinuance was increased earned income. The petitioner timely appealed.
4. The petitioner identified no deductions from gross income from lines #23 - #35 of a federal 1040 income tax form (or from lines #16-#20 of a 1040A form).
5. The Department tested the household's income against the 100% FPL monthly income test for one person of \$972.50. Because the average income from the summer exceeded the limit, the case was discontinued.
6. The petitioner is a seasonal worker in the landscape industry. His highest paychecks are received in the spring and summer, and he expects to be laid off in November 2015. Per his 2014 1040EZ tax return, the petitioner's household's gross wages and Unemployment Compensation received in 2013 totaled \$10,422 (\$868.50 monthly). The petitioner worked and is working for the same company in 2014 and 2015, and expects his 2015 annual income to be similar.

### 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, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>. The petitioner meets the nonfinancial eligibility tests for the program.

The petitioner must also pass an income test. The income limit for adults went lower effective April 1, 2014: an eligible adult 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. *Id.*, § 50.1.

The Department calculated monthly gross income for this household of \$2,761.36. 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 petitioner argues that he is a seasonal worker, working for the same employer as he did in 2014. His 2014 gross income was \$868.50 monthly. Thus, when his income is looked at over a one-year span, the household income is low enough for him to remain on BCP.

The federal insurance Marketplace looks at the prior year's tax filing in deciding whether a person (1) should apply with their state for Medicaid/BadgerCare Plus, or (2) purchase private insurance through the Marketplace, with a premium subsidy. To avoid the unreasonable result of a state agency saying that a person is not BCP eligible due to short-term income and the Marketplace saying that the person is not eligible for a premium subsidy due to the same income that is averaged over one year, this Judge is quick to review the prior year's tax-reported income. In this instance, the petitioner was eligible, based on 2014 income that is anticipated to be repeated in 2015.

**CONCLUSIONS OF LAW**

1. The petitioner's one-person household income does not exceed the relevant limit for adult BCP eligibility.

**THEREFORE, it is****ORDERED**

That the petition is remanded to the Department with instructions to resume BCP certification of the petitioner effective May 1, 2015. This action shall be taken within 10 days of the date of this Decision.

**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 18th day of June, 2015

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\sNancy J. Gagnon  
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 June 18, 2015.

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