FH
Redact

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

BCS/166124

PRELIMINARY RECITALS

Pursuant to a petition filed May 19, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Wood County Human Services - WI Rapids in regard to Medical Assistance, a hearing was held on June 18, 2015, at Medford, Wisconsin.

The issue for determination is the county agency correctly ended the petitioner's BadgerCare Plus benefits because she has access to health insurance through an employer and her income exceeds 150% of the federal poverty level.

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
Wood County Human Services - WI Rapids
220 Third Avenue South
Suite 4
Wisconsin Rapids, WI 54495

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # Redact) is a resident of Taylor County.

2. The petitioner began a job on March 30, 2015, in which her employer pays for at least 80% of her health insurance premiums.

3. There are four persons in the petitioner's household.

4. The petitioner's total monthly household income is $4,568.20.

5. The federal poverty level for a four-person household is $2,020.83; 150% of the federal poverty level for a four-person household is $3,031.25; 191% of the federal poverty level for a four-person household is $3,859.79. *BadgerCare Plus Handbook,* § 50.1.

6. The county agency notified the petitioner on April 21, 2015, that her children's BadgerCare Plus would end on June 1, 2015.

DISCUSSION

The county agency notified the petitioner that her children's BadgerCare Plus would end on June 1, 2015, because she has a job that provides health insurance and pays for at least 80% of the premium and her household income exceeds the program's limit.. BadgerCare Plus is Wisconsin's Medicaid program for those who are not elderly, blind, or disabled. Wis. Stat. § 49.471.

Generally, adults are ineligible for BadgerCare Plus if their household's income exceeds 100% of the federal poverty level and children are ineligible if it exceeds 300% of the federal poverty level. Wis. Stat. § 49.471(4)(a). The federal poverty level for a four-person household, the size of the petitioner's, is $2,020.83. *BadgerCare Plus Handbook,* § 50.1. The petitioner's gross monthly household income is $4,568.20 per month, which at 226% of the federal poverty level is over the limit for adults but under the limit for children.

But the program's rules also limit coverage to those with access to insurance. These rules derive their authority from an interminable maze of statutory sections and subsections, with one referring to another, which refers to yet another that may provide an exception, only to find that another section limits the exception. And to add to the confusion, the law retains language that no longer applies directly to any situation. Thus, Wis. Stat. § 49.471(8)(cg) states that persons over 18 are not eligible for BadgerCare Plus if they have access to insurance if their income exceeds 133% of the federal poverty level, even though no adult is eligible if his income exceeds 100% of the federal poverty level. And even though this section applies specifically to those over 18, Wis. Stat. § 49.471(cr)1a states that a person is not eligible if subsection (cg) applies to it and the person is a child. Section 49.471(8)(d)1 states that persons are not ineligible for BadgerCare Plus because of insurance if the person is a child described in "(4)(a) 2. or 2m." Those subsections state:

> 2. A child who is under one year of age, whose mother was, on the day the child was born, eligible for and receiving medical assistance under subd. 1. or 5. or s. 49.46 or 49.47, and who lives with his or her mother in this state.
> 2m. A child who is under one year of age, whose mother was determined to be eligible under subd. 1g., and who lives with his or her mother in this state.

After ricocheting about, one eventually comes to a section that indicates that children under a year old are presumed to be eligible for benefits if the household's income does not exceed 300% of the federal poverty level, those between one and six years old are presumed to be eligible if the income does not exceed 185% of the federal poverty level, and those between six and 19 are presumed to be eligible if the income does not exceed 150% of the federal poverty level. These income limits only apply if the federal government rejects the department's request to deny coverage to children during the period in question. Wis. Stat. § 49.471(5)(b)2.

The *BadgerCare Plus Handbook* provides the department's interpretation and explanation of BadgerCare Plus laws. Although policies usually do not have the same legal force as statutes and administrative code provisions, BadgerCare Plus statutes have been written to give the department a great deal of discretion. Based upon this and the general incoherence of the statute, I will rely on the policies found in that manual. Those policies set the income limits for those with access to insurance in which an employer pays at least 80% of the policy's premiums. *See BadgerCare Plus Handbook,* § 7.3.2. In most of the current situations, if the child is at least one but less than six, the limit is 191% of the federal poverty level; if the child is at least six but less than 19, the limit if 156% of the federal poverty level. *BadgerCare Plus Handbook,* § 7.1.2. However, some households that have been eligible under old rules are covered by different standards. For them, the income limit is 185% of the federal poverty level for the younger set of children and 150% for the older set. This second set of figures mirrors the statute and apparently what the agency depended upon to determine the eligibility of the petitioner's children, although I cannot find anything in the record indicating their ages.

Presuming her children are over a year old, because her household income, at 226% of the federal poverty level, exceeds 191% of the federal poverty level, the highest possible level for any child over one year old, her children are ineligible to continue receiving benefits. She points out that one of them needs braces, which the insurance subsidized by her employer pays little of. While I understand her hardship, I must apply the law as it is written, and there is no exception for persons in this situation, especially where there is no prior authorization already in place. Therefore, I must uphold the agency's decision to end her children's eligibility for the BadgerCare Plus.

CONCLUSIONS OF LAW

The county agency correctly ended the petitioner's BadgerCare Plus payments because an employer offers health insurance and pays at least 80% of the premium and her household income exceeds 150% of the federal poverty level.

THEREFORE, it is **ORDERED**

The petitioner's appeal 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 Madison,
Wisconsin, this 26th day of June, 2015

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on June 26, 2015.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability