



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/166473

PRELIMINARY RECITALS

Pursuant to a petition filed June 05, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on June 25, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied the Petitioner's application for BadgerCare+ benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Jose Silvestre, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On March 16, 2015, the Petitioner submitted an on-line ACCESS application for healthcare benefits. Petitioner reported a household of one person; working 10 hours per week at \$13.25 per

- hour; receiving unemployment benefits in the amount of \$125.00 per week; and having a student load deduction of \$135.00 per month. (Exhibit 14)
3. Her actual unemployment benefit, on the date of application was \$249.00 per week. (Exhibits 3 and 16)
 4. On March 19, 2015, the agency sent the Petitioner a notice, indicating that she was not enrolled in BadgerCare+, because her income was over the program limit. (Exhibit 17)
 5. On April 16, 2015, the Petitioner provided two paystubs, one dated March 20, 2015, showing gross income of \$133.16 and one dated April 3, 2015, showing gross income of \$266.99. (Exhibit 29)
 6. On April 23, 2015, the agency sent the Petitioner another notice, advising her that she was not enrolled in BadgerCare+, because she was over the income limit. (Exhibit 20)
 7. Petitioner filed a request for Fair Hearing that was received on June 5, 2015. (Exhibit 1)
 8. The Petitioner reapplied for benefits and on June 24, 2015, the agency sent the Petitioner a notice, advising her that she was not enrolled in BadgerCare +, because she was over the income limit. (Exhibit 28)
 9. At the hearing Petitioner provided two paystubs, one dated May 1, 2015, showing gross income of \$262.75 and one dated May 15, 2015, showing gross income of \$255.93. (Exhibit 2)
 10. During the entire time in question, the Petitioner received unemployment benefits. Her monthly benefit is \$249.00 per week. For reasons not made clear in the record, her actual payment was sometimes lower. (Exhibits 3 and 16)

DISCUSSION

BadgerCare Plus (BC+) is a state/federal program that provides health coverage for Wisconsin families. *BadgerCare + Eligibility Handbook (BEH) §1.1.1¹*.

Effective April 1, 2014, an adult must have household income below 100% the Federal Poverty Level, in order to be eligible for the BadgerCare+ health plan and all available gross income must be counted. *BEH §16.1* 100% FPL for a household of one person is \$980.83 per month. *BEH§50.1*

For BadgerCare+ purposes, only actual gross monthly income is used. Estimated amounts using the 4.3 weekly pay period or 2.15 bi-weekly pay period multipliers are NOT used. *Process Help §16.4.1*; see also *Ops Memo 01-01*

Certain tax deductions from income are allowed, such as pre-tax deductions from paychecks for health insurance, retirement contributions or dependent care savings accounts. *BEH§16.3.2* In addition, certain deductions from page 1 (one) of the IRS tax form 1040 are also allowed, such as Petitioner's student interest loan payment. *BEH§16.3.3*

On the date of application, Petitioner's monthly income would have been calculated as follows:

\$13.25 x 10 hours x 4 weeks = \$530.00 earned income
 \$249 x 4 weeks = \$996 unemployment income

\$530.00 + \$996.00 -\$135.00 (Student Loan Interest) = \$1391.00 Total countable monthly income

¹The BadgerCare+ Eligibility Handbook may be viewed on line at:

<http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>

Petitioner's income exceeded the 100% FPL income limit of \$980.83. As such, the agency correctly denied the Petitioner March 2015 application for benefits.

On April 16, 2015, the Petitioner provided two paystubs, one dated March 20, 2015, showing gross income of \$133.16 and one dated April 3, 2015, showing gross income of \$266.99. Thus, Petitioner's monthly earned income worked out to be:

$$\$133.16 + \$266.99 = \$400.15$$

The Petitioner continued to receive unemployment benefits at this time, but benefits began to fluctuate. Her checks for the last four weeks on and before April 16, 2015, were as follows:

4/16	\$135.00
4/08	\$104.00
4/08	\$186.00
3/25	\$249.00
3/18	\$180.00

Total: \$854.00

Thus, Petitioner's countable monthly income worked out to be:

\$400.15 earned income
+ \$854.00 unemployment income
- \$135.00 Student Loan Interest

\$1119.15 Total countable monthly income

Petitioner's income exceeded the 100% FPL income limit of \$980.83. As such, the agency correctly denied the Petitioner's application for benefits in April 2015.

Petitioner reapplied for benefits on June 24, 2015. At the hearing, she provided two pay stubs, one dated May 1, 2015, showing gross income of \$262.75 and one dated May 15, 2015, showing gross income of \$255.93. Thus, Petitioner's monthly earned income worked out to be:

$$\$262.75 + \$255.93 = \$518.68$$

The four most recent weeks of unemployment benefit information, in the record is as follows:

6/09	\$186.00
6/02	\$111.00
5/26	\$186.00
5/19	\$186.00

Total: \$669.00

Petitioner's monthly income worked out to be:

$$\$518.68 + \$669.00 - \$135.00 \text{ Student Loan Interest} = \$1052.68$$

Petitioner's income still exceeded the 100% FPL income limit of \$980.83. As such, the agency correctly denied the Petitioner's June 2015 application for benefits.

The Petitioner argued that it is not fair to deny her benefits, because she has a chronic health condition that requires regular treatment. However, administrative law judges do not have the authority to make exceptions to the rules, but must instead follow the law as it is written.

The Petitioner might be able to receive free or reduced cost health care at one of the clinics listed on the Department of Health Services website:

<https://www.dhs.wisconsin.gov/forwardhealth/clinics.htm>

Petitioner should note that if she is denied assistance from the Market Place, that she might be eligible for BadgerCare+ benefits, under "gap filling" rules. This policy is described in DHS Operation Memo DHS-14-41.

It notes that while current BC+ "MAGI" rules base eligibility on current monthly income, the Marketplace uses prospective annual income under "36B rules" to determine eligibility for a Marketplace subsidy. Thus it is acknowledged that a person could be below 100% of the FPL for subsidy purposes, but above 100% for BC+ purposes.

The Memo provides on page 2:

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 Medicaid (or in Wisconsin's case, BC+) based on a monthly equivalent of their expected annual income.*

So, Petitioner might wish to apply for insurance through the FFM (Marketplace).

CONCLUSIONS OF LAW

The agency correctly denied the Petitioner's application for BadgerCare+ benefits.

THEREFORE, it is ORDERED

That the petition 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.

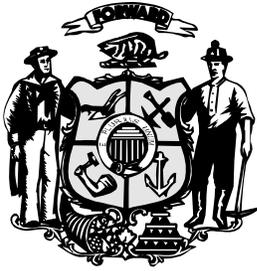
APPEAL TO COURT

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 6th day of July, 2015.

\sMayumi M. Ishii
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 July 6, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability