



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/167611

PRELIMINARY RECITALS

Pursuant to a petition filed July 29, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on August 18, 2015.

The issue for determination is whether the agency correctly terminated petitioner’s BadgerCare Plus (BCP) MA effective July 31, 2015 due to being over the income limit.

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: Kathy Jones, ESS
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Waukesha County.
2. Petitioner receives \$1706 monthly in SSDI. He is self-employed and has a monthly loss of income in the amount of \$354.

3. On July 13, 2015 the agency issued a notice of decision to petitioner stating that effective August 1, 2015 his BCP would end because he was over the BCP income limit.

DISCUSSION

BCP is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. The program has nonfinancial eligibility standards and financial eligibility standards. The issue in this case relates to the financial eligibility. The BCP income limit for adults went lower effective April 1, 2014: an eligible applicant or member cannot have adjusted gross income exceeding 100% of the federal poverty level (FPL). Wis. Stat. §49.45(23)(a); *BadgerCare Plus Eligibility Handbook (BCPEH)*, §16.1.1, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>. The 100% FPL amount in 2015 is \$980.83 monthly for a household of one. *Id.*, §50.1.

The agency calculated gross monthly income for this household as \$1352. This resulted because the agency deducted the loss in his self-employment from his SSDI income. From gross income the agency 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). The only allowable deductions are stated as follows:

Under MAGI rules, pre-tax deductions will be allowed if the payments are taken out of the individual's paycheck on a pre-tax basis. Examples include but are not limited to:

1. Health Insurance premium payments, including pre-tax premium payments for medical, dental or vision plans
2. Health Savings Account (including flexible spending accounts) contributions
3. Retirement contributions
4. Parking & Transit costs
5. Child Care Savings Account contributions
6. Group Life Insurance premium payments

BCPEH, §16.3.2.

And:

Under MAGI rules, monthly expenses related to the following tax deductions from page one of the IRS Form 1040 will be allowed as income deductions for the current year, even if the individual does not plan on filing taxes. If the expense is not incurred on a monthly basis, it will be prorated and counted as a monthly expense.

Most of these deductions are not common, and they do not include itemized tax deductions, like charitable contributions or mortgage interest.

In addition, a few deductions have caps, as noted in detail below. If an individual reports and verifies a monthly expense that is more than the monthly cap, the deduction will be the amount of the cap.

1. **Student Loan Interest**

Interest on a loan taken to pay for school expenses for the following persons at the time the loan was taken out:

- His or her spouse;
- His or her child under age 19; or

- His or her child under age 24 who was a student, lived with the individual for more than half a year, did not provide more than half of his or her own support for that year, and did not earn more than \$3,900 during that year.

Do not count interest on a loan used for anything besides paying for education or if a relative or employer gave the loan.

This deduction is capped at a monthly amount of \$208.

2. **Higher Education Expenses** Includes tuition and amounts paid for books or fees, but only if those amounts are required to be paid to the institution as a condition of enrollment or attendance. This deduction may not be claimed for expenses that were paid with tax-free educational assistance. Grants and scholarships used for tuition and fees are generally non-taxable, therefore this deduction cannot be claimed for the portion of tuition and fees that were paid for with grants and scholarships. This is capped at a monthly amount of \$333.
3. **Self-employment Tax Deduction** Applies to individuals who are self-employed, who owe self-employment tax, and who are able to deduct a portion of the self-employment tax they pay. Only deduct the portion that the person can deduct on their tax return (as calculated on Schedule SE), not the entire amount of self-employment tax that is paid.
4. **Spousal Support, Alimony or Maintenance** The amount paid for court ordered spousal support, alimony or maintenance or payments under Section 71 for a current or prior spouse as a result of a legal separation or divorce. Do not deduct more than the court ordered amount. Do not allow any deduction if the court order designates the payments as being non-taxable.
5. **Teachers' Tax-Deductible Expenses** Applies to K-12 teachers who have up to \$250 in out-of-pocket work expenses (expenses not paid for by the employer). This is capped at a monthly amount of \$21.
6. **Self-employed SEP, Simple or Qualified Plan Contributions**
Examples of these plans include:
 - Simplified Employee Pension (SEP) Plan
 - Savings Incentive Match Plan For Employees (SIMPLE)
 - Qualified Plan Contributions
7. **Penalties for Early Withdrawal of Funds** Penalties to a bank or financial institution for withdrawing funds early from a savings account where money must be left in the account for a fixed period of time, such as a time saving account, certificate of deposit (CD) or an annuity.
8. **Performing Artists Tax-deductible Expenses** Applies to performing artists who have out-of-pocket business expenses not paid by the employer and meet the following criteria:
 - Worked for at least two employers who each paid at least \$200;
 - Did not earn more than \$16,000 for his or her work in the current year; and
 - Out-of-pocket expenses were more than 10% of his or her earnings.

9. **Military Reserve Members' Tax-deductible Expenses** Applies to travel expenses for members of the Armed Forces Reserve who travel more than 100 miles away from home to perform work for the Armed Forces Reserve.
10. **Out-of-pocket Costs for a Job-related Move** Applies to individuals who paid out-of-pocket expenses for a job-related move and meets the following criteria:
- The move must be for a job-related reason, such as starting a new job, and
 - The new job must be at least 50 miles farther from the individual's old home than the old home was from the individual's old job or must be at least 50 miles from the old home if the individual did not have a job before.
11. **Loss from Sale of Business Property** Applies to self-employed individuals that had a loss from the sale or exchange of property that they owned for their business.
12. **Individual Retirement Account (IRA) Contributions** Applies to individuals who had income from a job and made contributions to an individual retirement account (IRA). Also applies to self-employed individuals who made contributions to an IRA they set up themselves.
13. **Fee-based Official Tax-deductible Expenses** Applies to individuals who are fee-based officials and have out-of-pocket business expenses. Examples of fee-based officials include chaplains, county commissioners, judges, justices of the peace, sheriffs, constables, registrars of deeds or building inspectors.
14. **Domestic Production Activities Deduction** Applies to self-employed individuals who led the production of things like property, electricity, natural gas, or potable water, as long as these things were produced in the United States. This also applies to individuals who invented or created software, recordings, or films in the United States.

Note: This deduction is not common.

15. **Allowable Write-in Expenses** These deductions include:
- Contributions to Archer MSAs
 - Deductions attributable to rents and royalties
 - Certain deductions of life tenants and income beneficiaries of property
 - Jury duty pay given to the employer because the juror was paid a salary during duty
 - Reforestation expenses
 - Costs involving discrimination suits
 - Attorney fees relating to awards to whistleblowers
 - Contributions to section 501(c)(18)(D) pension plans.
 - Contributions by certain chaplains to section 403(b) plans

BCPEH, §16.3.3.

No evidence suggested petitioner was eligible for any other deduction than he received.

The petitioner questioned why some expenses like mortgage were not deducted from his income. As explained above, those expenses are not eligible expenses here for BCP. Prior to and at the hearing the agency advised petitioner to reapply so that he could be tested for eligibility under another MA program. He agreed that he would, and if he is denied again, he would again have appeal rights if he disagrees with the decision.

Based on the information before me, I must find that the agency correctly calculated the petitioner's household income, which is over the BCP eligibility limit. While I understand this may seem unfair, I cannot deviate from the income requirements established under state law.

CONCLUSIONS OF LAW

The agency correctly terminated petitioner's BCP MA effective July 31, 2015 due to being over the income limit

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 3rd day of September, 2015

\sKelly Cochrane
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 September 3, 2015.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability