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[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/168560

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 09, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on October 08, 2015, at Kenosha, Wisconsin.

The issue for determination is whether the Kenosha County Human Service Department (the agency) correctly ended BadgerCare+ benefits for Petitioner, her husband and her child.

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: Karen Mayer, Fair Hearing Coordinator  
Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner completed a health care renewal on August 24, 2015. (Exhibit 3)

3. On September 1, 2015, the agency sent the Petitioner a notice advising her that she and her husband would not be enrolled in Badgercare+ as of October 1, 2015, because they were over income limit. (Exhibit 7)
4. That same notice indicated that Petitioner's daughter could be eligible for benefits, if she met a deductible. (Id.)
5. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 9, 2015. (Exhibit 1)

### DISCUSSION

BadgerCare Plus (BC+) is a state/federal program that provides health coverage for Wisconsin families. *BadgerCare + Eligibility Handbook (BEH) §1.1.1.*<sup>1</sup>

Effective April 1, 2014, an adult's adjusted gross household income must be 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* Prior to this, the income limit was 200% of FPL. Id.

Under the applicable MAGI rules, children under 19 years of age, must have income below 306% of FPL, which for a household of three, is currently \$5122.95. *BEH §§16.1 and 50.1*

In determining eligibility for BadgerCare+ under the newer "MAGI" rules, certain deductions from income are allowed:

#### 16.3.2 Pre-Tax Deductions

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

#### 16.3.3 Tax Deductions

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:

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<sup>1</sup> The BadgerCare+ Eligibility Handbook may be viewed on-line at:

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

- 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:
  7.
    - Simplified Employee Pension (SEP) Plan
    - Savings Incentive Match Plan For Employees (SIMPLE)
    - Qualified Plan Contributions
8. **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.
9. **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.
10. **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.

11. **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.
12. **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.
13. **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.
14. **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.
15. **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.

16. **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

*BEH §16.3*

It is the agency's contention that Petitioner's household income exceeds the established income limits and as such, she is not eligible for benefits and her child is only eligible if the child meets a deductible.

*Eligibility for Petitioner and Spouse*

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*

Petitioner submitted two bi-weekly paystubs from her employer (Exhibit 4), one showing gross income of \$1181.18 and one showing gross income of \$1227.20 for total monthly income of :

$$\$1181.18 + \$1227.20 = \$2408.38.$$

Petitioner's paychecks reflects pre-tax deductions for dental insurance, in the amount of \$8.06 per month; for 401K contribution of \$20.00 per month, and \$28.00 per month for group life insurance.

Consequently, her Medicaid Adjusted Gross Income (MAGI) works out to be:

\$2408.38 Total Gross Income for Petitioner  
 -\$8.06 Dental Insurance Contribution  
 -\$20.00 401K contribution  
 -\$28.00 Group Life Insurance

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\$2352.33 adjusted gross income

Petitioner also provided her husband's paystubs (Exhibit 5), one showing gross income of \$1,547.17 and one showing gross income of \$1,813.02 for total gross monthly income of:

$\$1,547.17 + \$1,813.02 = \$3360.19$

The husband's pay stubs indicate that **pre-tax** deductions are denoted on the paystubs with an asterisk. His first paystub reflects pre-tax deductions of \$8.96 for dental insurance, \$138.62 for Medical insurance and \$15.47 for a 401K contribution. The second check reflects deductions of \$8.96 for dental insurance, and \$138.62 for Medical, \$18.13 for an 401K contribution. So, the monthly pre-tax deductions are:

$\$8.96 + \$8.96 = \$17.92$  for dental  
 $\$138.62 + \$138.62 = \$277.24$  for Medical  
 $\$15.47 + \$18.13 = \$33.60$  for 401K contributions

There were additional deductions reflected in the paychecks for supplemental life insurance for the Petitioner, her husband, as well as a deduction for what appears to supplemental accidental death and dismemberment insurance. However, those deductions are not taken out pre-tax and they do not fall into any categories of deductions under *BEH §16.3.3* above.

Petitioner's husband's MAGI Income works out to be:

\$3360.19 total gross income  
 -\$17.92 dental insurance  
 -\$277.24 for Medical  
 -\$33.60 for 401K contributions

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\$3031.43 adjusted gross income

The total household MAGI income is then:  $\$2352.33 + \$3031.43 = \$5383.76$ .

100% of FPL for an assistance group size of three is \$1674.17. *BEH §50.1*. Petitioner's income of \$5383.76 per month was over the \$1674.17 - 100% FPL income limit. As such, the agency correctly ended BadgerCare+ benefits for Petitioner and her husband.

#### *Eligibility for Petitioner's Child*

As indicated earlier, the MAGI income limit for children under 19 years of age is 306% of FPL, which for a household of three, is currently \$5122.95. *BEH §§16.1 and 50.1*

Petitioner's household income of \$5383.76 is over the 306% FPL income limit of \$5122.95 for a family of three. Thus, the agency correctly indicated that the child was not currently eligible for BadgerCare+ benefits.

However, children with household income over 306% of FPL can be eligible for BadgerCare+ if they meet a deductible. *BEH §17.1* Children whose BadgerCare+ coverage is terminated solely due to access to other health insurance may also become eligible for BadgerCare+ by meeting a deductible. *Id.*

To calculate the dollar amount of the BadgerCare Plus deductible for a child under MAGI rules:

1. Determine the BadgerCare Plus deductible period.
2. Find the child's assistance group's total countable income for each month in the deductible period.
3. If the assistance group's total countable income includes the income of someone other than the child, the child's parents, or, if married, the child's spouse, subtract the income of that person, but do not change the group size of the AG.
4. Compare the total income of each month with 150% FPL. If a month's income is less than or equal to 150% FPL, ignore it. If a month's income is more than the income limit (150% FPL), find the excess income by subtracting the income limit from the income of that month. The child could choose to drop the deductible for months his or her income decreases so that the child is eligible to enroll in BadgerCare Plus.
5. Add together the excess income of the months in the deductible period. The result is the child's BadgerCare Plus deductible amount.

*BEH §17.1*

150% of FPL for a household of three people is \$2511.25. *BEH §50.1*.

If Petitioner's income remains unchanged over the next six months, the child's deductible will work out to be:

$$\begin{aligned} \$5383.76 - \$2511.25 &= \$2872.51 \\ \$2872.51 \times 6 \text{ months} &= \$17,235.06 \text{ deductible} \end{aligned}$$

Petitioner argues that it is unfair to end her daughter's benefits because her daughter suffers from cystic fibrosis, so the child needs regular treatment and intermittent hospitalizations. Petitioner also argues that it is unfair, because her family cannot afford the insurance through the parents' employers, nor can they afford the BadgerCare+ deductible.

The Petitioner's concern for her child is understandable, as is her frustration over the cost of private insurance premiums and the amount of the BadgerCare+ deductible. However, it has been the long standing policy of the Division of Hearings and Appeals that administrative law judges do not have the ability to make decisions based upon what a party thinks is fair. Rather, administrative law judges may only base a decision upon the law as it is written. (See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] (Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987)(DHSS); "An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates.[citation omitted]" *Oneida County v. Converse*, 180 Wis.2nd 120, 125, 508 N.W.2d 416 (1993).

**CONCLUSIONS OF LAW**

The agency correctly ended BadgerCare+ benefits for Petitioner, her husband and her child.

**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 23rd day of November, 2015.

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\sMayumi M. Ishii  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 23, 2015.

Kenosha County Human Service Department  
Division of Health Care Access and Accountability