



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:



DECISION

BCS/168956

PRELIMINARY RECITALS

Pursuant to a petition filed September 22, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Marathon County Department of Social Services [“County”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on December 15, 2015. At petitioner’s request a Hearing scheduled for November 11, 2015 was rescheduled. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter: BCS-168958.

The issue for determination is whether petitioner’s daughter is eligible for BadgerCare Plus MA [“BC+”] for April 2015.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

BY:  ESS
Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County, Wisconsin.
2. In July 2015 petitioner applied for BC+ for her 14-year-old daughter; the group size for her daughter is 2.
3. Petitioner's BC+ countable income for April 2015 was in excess of \$3,000.
4. Petitioner was sent an *About Your Benefits* written notice dated September 16, 2015 informing her that her 14-year-old daughter was not eligible for BC+ for April 2015 because petitioner's income was over the BC+ program income limit for that month.

DISCUSSION

In order to be eligible for BC+ an applicant cannot have adjusted gross income exceeding 100% of the Federal Poverty Level ["FPL"]. Wis. Stat. § 49.45(23)(a) (2013-14); *BadgerCare Plus Eligibility Handbook* ["BC+EH"] § 16.1.1. Children ages 6 through 18 may have their eligibility backdated up to the first of the month, three calendar months prior to the month of application for any of the months in which their family income was at or below 156% FPL. BC+EH 25.8.1. For a group size of 2 persons, like petitioner, 156% FPL is \$2,070.90 per month. BC+EH § 50.1. The only allowed deductions from income are the federal income tax deductions used to arrive at Modified Adjusted Gross Income ["MAGI"], with some modifications.¹ See, BC+EH 16.3 & 42 C.F.R. § 435.603(e) (2015). The evidence in the record this matter is that petitioner was allowed the appropriate deductions.

Petitioner argues that the group size for her daughter should be 3, not 2, because her 16-year-old son should also be included in the group (petitioner is divorced and on her 2014 federal 1040 tax return claims her 16-year-old son as a tax dependent but does not claim her 14-year-old daughter as a tax dependent because she is claimed by her father on his tax return). BC+ eligibility determinations use MAGI rules. MAGI rules are based on the concept of an individual's tax household, not necessarily on the physical household or family relationships. BC+EH 2.3.2. It is not necessary to address petitioner's argument. Even if the correct group size is 3 (as petitioner argues) petitioner's income was over the BC+ program limit for April 2015. For a group size of 3 persons 156% FPL is \$2,611.70 per month. BC+EH § 50.1

CONCLUSIONS OF LAW

For the reasons explained above, petitioner's daughter is not eligible for BC+ for April 2015.

NOW, THEREFORE, it is

ORDERED

¹ Allowed deductions include: health insurance premium payments (including pre-tax premium payments for medical, dental, or vision plans); Health Savings Account ["HSA"] (including flexible spending accounts) contributions; retirement contributions; parking and transit costs; Child Care Savings Account ["CSA"] contributions; group life insurance premium payments; student loan interest (only if the loan was used for school expenses); and, higher education expenses (but not if the expenses were paid with tax-free educational assistance). BC+EH 16.3.2 & 16.3.3.

that the petition for review herein be and the same is hereby 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 30th day of December, 2015

\sSean P. Maloney
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 December 30, 2015.

Marathon County Department of Social Services
Division of Health Care Access and Accountability