



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/169691

PRELIMINARY RECITALS

Pursuant to a petition filed October 28, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on November 18, 2015, by telephone.

The issue for determination is whether the Department correctly discontinued the petitioner's adult BCP due to excess income.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted] ES Supr.
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted] 0) is a resident of Clark County.
2. The petitioner had an ongoing BCP case for his household of five (self, spouse, three minor children). In September 2015, the petitioner's case underwent a periodic review. On September

28, 2015, the Department issued written notice to the petitioner advising that the BCP case would close effective November 1, 2015, because requested financial verification had not been submitted.

3. The petitioner later submitted the needed verification. The agency determined that the petitioner receives gross wages of \$1,780 monthly, and that his financial aid exceeds his tuition by \$74.33 monthly. His wife receives undisputed earnings of \$200 monthly. The agency determined that her financial aid exceeds her tuition by \$534.72 monthly.
4. On October 23, 2015, the Department issued written notice to the petitioner, advising that the two adults were not eligible for BCP, due to excess income. The children remained eligible. The petitioner appealed.
5. The petitioner does not contest the budgeted wages, his gross financial aid of \$2,166 for the semester, his semester tuition cost of \$1,355.40, or his semester book expense of \$513.26. The petitioner's wife received financial aid of \$6,550, and paid \$4,411.12 in tuition, leaving a balance of \$2,138.88 for the semester, or \$534.72 monthly to be budgeted as income. She also was required to pay a \$300 edTPA fee by the Wisconsin Department of Public Instruction for a test during this, her final semester. The petitioner's wife is obtaining a teaching degree, and the edTPA test is required as a condition of teacher licensure. Even if the \$300 fee is divided by four months and subtracted from gross income, the household's gross income still slightly exceeds the income limit for adults for BCP.

DISCUSSION

BadgerCare Plus is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. 2013 Wisconsin Act 116, § 29, for effective date; *BadgerCare Plus Eligibility Handbook (BCPEH)*, § 2.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>. The petitioner meets the nonfinancial eligibility tests for the program.

The petitioner must also pass an income test. Per Wisconsin statutory changes in 2014, the income limit for an eligible adult applicant was lowered to adjusted gross income at 100% of the federal poverty level (FPL). Wis. Stat. § 49.45(23)(a); *BCPEH*, § 16.1. The 100% FPL amount is \$980 monthly for a household of one, and \$2,367.50 for a household of five in 2015. *Id.*, § 50.1. Children are subject to a higher income limit. This household's income was under the children's limit, so the petitioner's children remain eligible for BCP.

The Department has calculated a monthly gross income amount for the petitioner's household of \$4,159, based on averaged paystubs and verified student financial aid. From gross income, the Department 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).

There is an allowable deduction at line 19 of the 1040A return, for "higher education expenses." Both the IRS and state policy allow subtraction of up to \$4,000 annually for postsecondary tuition, school fees and books. *BCPEH*, § 16.3.3; IRS Form 8917. The parties agree that the petitioner is paying \$1,355.40 in tuition, \$513.26 for books, and that his wife is paying \$4,411.12 in tuition, per semester. When these amounts are divided by four months and subtracted from monthly gross income, the result is that their adjusted gross income is still over the **\$2,367.50** monthly FPL level for their household size:

<i>Gross Income</i>	<i>Allowable Higher Educ. Expenses</i>
1780 earnings	4159.00 gross income
200 earnings	-1102.75 her tuition (4,411/4)
1637.50 aid (6550/4)	- 338.75 his tuition (1,355/4)
<u>541.50 aid (2166/4)</u>	- <u>128.32</u> his books (513.26/4)
\$4159 monthly	2589.18 countable gross income

I did not subtract the wife's \$75 (\$300/4) edTPA test fee because it does not appear to fit within the IRS' definition of a "qualified higher education expense."

Qualified Education Expenses

Generally, qualified education expenses are amounts paid in 2014 for tuition and fees required for the student's enrollment or attendance at an eligible educational institution. Required fees include amounts for books, supplies, and equipment used in a course of study if required to be paid to the institution as a condition of enrollment or attendance.

IRS Form 8917. Thus, the adults are ineligible for BCP effective November 1, 2015.

CONCLUSIONS OF LAW

1. The petitioner's adjusted gross income exceeds the relevant limit for BCP eligibility.
2. The Department correctly discontinued the petitioner's adult BCP.

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 Madison,
Wisconsin, this 19th day of November, 2015

\sNancy J. Gagnon
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 November 19, 2015.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability