



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/169622

PRELIMINARY RECITALS

Pursuant to a petition filed October 26, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Portage County Department of Human Services in regard to Medical Assistance, a hearing was held on November 24, 2015, at Stevens Point, Wisconsin.

The issue for determination is whether the county agency correctly denied the petitioner's request that he receive retroactive BadgerCare Plus benefits.

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: [Redacted]

Portage County Department of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Portage County.
2. The petitioner applied for BadgerCare Plus in July, 2015, seeking benefits retroactive to June 1, 2015, for his one-person assistance group.

3. The petitioner was found eligible for BadgerCare Plus benefits effective July 1, 2015. He was subsequently found effectively ineligible for retroactive BadgerCare Plus benefits due to income exceeding program limits in the month of June, 2015.
4. The petitioner was involved in a severe accident in June, 2015, which resulted in substantial medical bills.
5. In June, 2015, petitioner's income exceeded the BadgerCare Plus income limit by approximately \$48.00.

### DISCUSSION

BadgerCare Plus is Wisconsin's medical assistance program for those who are not elderly or disabled. Adults are ineligible if their household income exceeds the federal poverty level, which for a single person such as the petitioner is \$980.83 a month. Wis. Stat. § 49.471(4)(a); *BadgerCare Plus Handbook*, § 50.1.; *BadgerCare Plus Handbook*, § 50.1. The county agency denied BadgerCare Plus to the petitioner after finding that his income exceeded \$1,000 per month. He contends that his income is overstated because the respondent considered June, 2015, income that included non-typical income including holiday pay and floating pay. Medical assistance eligibility can be made retroactive to "the first day of the month 3 months prior to the month of application." Wis. Admin. Code, § DHS 103.08(1). The *Medicaid Eligibility Handbook* states the following in regard to retroactive eligibility:

... If certifying for retroactive BadgerCare Plus, do not go back further than the first of the month, three months prior to the application month. Certify the person for any backdate month in which he or she would have been eligible had he or she applied in that month. In the case of children, certify the person for any backdate month in which he or she would have been eligible had he or she applied in that month and in which their assistance group income was at or below the appropriate FPL level for their age group. ...

*Medicaid Eligibility Handbook*, § 25.8.1.

The respondent established that it considered petitioner's two June, 2015, paystubs when it determined that he did not qualify for backdating to June, 2015. The petitioner concedes that his income exceeded the BadgerCare Plus income limit by approximately \$48.00. He argues, however, that the June income included holiday pay and floating pay, which artificially inflated his income for that month. The respondent countered that actual income is considered when considering backdated eligibility. I must concur with the respondent's contention.

BadgerCare Plus policy, quoted above, requires that backdated eligibility can be granted where petitioner would have been eligible had he applied in that month. The petitioner has not established that, while the excess income is very small, he would have been eligible for BadgerCare Plus benefits in June, 2015. Considering the situation, and the extensive medical bills incurred in June, 2015, I sincerely empathize with petitioner's dilemma. However, Administrative Law Judges do not possess powers of equity; I am unable to base a decision on fairness, but must make my determination based upon program rules and statutes.

Based upon the entirety of the record, I must uphold the agency's denial of backdated benefits for June, 2015.

**CONCLUSIONS OF LAW**

The petitioner's household is not eligible for retroactive BadgerCare Plus benefits in June, 2015, because petitioner would not have been eligible if he had applied that month.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal 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 15th day of January, 2016

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\sPeter McCombs  
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 January 15, 2016.

Portage County Department of Human Services  
Division of Health Care Access and Accountability