



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/169866

**PRELIMINARY RECITALS**

Pursuant to a petition filed November 02, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Fond Du Lac County Department of Social Services in regard to Medical Assistance, a hearing was held on December 08, 2015, at Fond Du Lac, Wisconsin.

The issue for determination is whether the Fond Du Lac County Department of Social Services (the agency) correctly ended the Petitioner's BadgerCare+ benefits effective October 1, 2015.

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: Deb Bohlman, Economic Support Specialist  
Fond Du Lac County Department of Social Services  
50 N. Portland St.  
Fond Du Lac, WI 54935

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Fond Du Lac County.
2. On September 4, 2015, the agency sent the Petitioner a Notice of Proof Needed, requesting verification of income from a property on . The verification was September 14, 2015. (Exhibits 3)

3. On September 14, 2015, the Petitioner submitted a letter, indicating that the home is rental property. (Exhibit 5)
4. On September 17, 2015, the agency sent the Petitioner a Notice of Proof Needed, requesting further verification of income from the property on [REDACTED]. The verification was due on September 28, 2015. (Exhibit 4)
5. On September 24, 2015, the Petitioner submitted another letter with a copy of a land contract for the property. (Exhibits 6 and 7)
6. According to the land contract, [REDACTED] and [REDACTED] agreed to purchase the home from the Petitioner, paying her \$1,102.00 per month; interest at 5.125% per the bank mortgage statement. (Exhibit 7)
7. The payments are to be made to Petitioner's ex-husband [REDACTED]. (Exhibit 7)
8. On September 29, 2015, the agency sent the Petitioner a notice, indicated that effective October 1, 2015, she would not be enrolled in BadgerCare+, because she was over the income limit. (Exhibit 9)
9. On October 28, 2015, the Petitioner submitted a copy of her 2014 tax return, indicating she received \$6,356 in interest income from the subject property. (Exhibit 8)
10. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 2, 2015. (Exhibit 1)
11. On November 16, 2015, the agency sent the Petitioner a notice, indicating that as of November 1, 2015, she was not enrolled in BadgerCare+ because she was over the income limit. (Exhibit 10)

### DISCUSSION

“Each client has the right to adequate and timely notice of adverse action.” *Income Maintenance Manual (IMM)* §3.2 “Timely Notice” is defined in IMM §3.2.3: “Provide adequate notice at least **10** days before the effective date of any intended adverse action.”

“A member must receive a notice at least ten days prior to a negative action such as a termination of benefits...” §BEH 29.1

In the case at hand, the Petitioner timely complied with the requests for verification. As such, her benefits should not have ended due to a failure to produce verification. The agency sent notice on September 29, 2015, that her benefits would be ending on October 1, 2015. That was only two-days notice, which does not satisfy the 10-day notice requirement.

The agency subsequently sent the Petitioner a retroactive notice on November 16, 2015, advising her that she was denied BadgerCare+ benefits, effective November 1, 2015. That did not correct the agency's failure to give ten-days notice of adverse action. As such, the agency will have to reinstate the Petitioner's BadgerCare+ benefits, until such time as it gives her proper notice of the termination of her benefits.

In addition, given the complexity of Petitioner's case, there is no way to determine the Petitioner's actual taxable income from the land contract.

The Petitioner indicated and the land contract shows that the payments on the land contract are received by her ex-husband. The Petitioner also indicated that those payments are sent directly to the bank, to cover her mortgage on the home. If that is the case, Petitioner's accountant has likely erred in doing her taxes. Her expenses - the outstanding mortgage - equals the income, which means her taxable income might actually be zero.

Please see: <https://www.irs.gov/publications/p537/ar02.html> regarding tax rules for installment sales i.e. land contract sales. According to the IRS website, Petitioner's tax return should have been filed on a form 1040 and included from 6252, a Schedule D and/or a Form 4797. That was not done here. Whoever prepared the Petitioner's taxes, only completed a form 1040A and a Schedule B.

The Petitioner should also note that under modified adjusted gross income (MAGI) rules, all taxable income is counted, including interest income. *BEH, §16.1* However, the following deductions from page 1 of IRS form 1040 are allowed:

1. Student Loan Interest
2. Higher Education Expenses
3. Self-employment Tax Deduction
4. Spousal Support, Alimony or Maintenance
5. Teachers' Tax-Deductible Expenses
6. Self-employed SEP, Simple or Qualified Plan Contributions
7. Penalties for Early Withdrawal of Funds
8. Performing Artists Tax-deductible Expenses
9. Military Reserve Members' Tax-deductible Expenses
10. Out-of-pocket Costs for a Job-related Move
11. Loss from Sale of Business Property
12. Individual Retirement Account (IRA) Contributions
13. Fee-based Official Tax-deductible Expenses
14. Domestic Production Activities Deduction
15. Allowable Write-in Expenses

*See BEH, §16.3.3.*

Further, the following pretax payroll deductions are allowed:

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

*See BEH, §16.3.2.*

So, if Petitioner has any of these deductions, she must report them to the agency.

In summary, Petitioner's situation is a more complicated one and her tax return was done incorrectly. In the absence of a competent accounting of her actual income from the land contract, there is no way to know whether the Petitioner is over the income limit for BadgerCare+.

### **CONCLUSIONS OF LAW**

The agency did not correctly end the Petitioner's BadgerCare+ benefits effective October 1, 2015.

**THEREFORE, it is**

**ORDERED**

That the agency reinstate the Petitioner's BagerCare+ benefits effective October 1, 2015. The agency shall take all administrative steps to complete this task within ten days of this decision.

**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 6th day of January, 2016

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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 January 6, 2016.

Fond Du Lac County Department of Social Services  
Division of Health Care Access and Accountability