



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/172414

PRELIMINARY RECITALS

Pursuant to a petition filed February 29, 2016, under Wis. Stat. § 49.45(5)(a), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on March 24, 2016, at Juneau, Wisconsin. At the request of the parties, the record was held open until March 31, 2016 for the submission to DHA (with a copy to the other party) of a written closing argument by the agency, and then a written closing argument by the petitioner. The agency timely submitted its closing argument to DHA which is received into the hearing record. However, the petitioner did not submit any timely closing argument to DHA.

The issue for determination is whether the county agency correctly denied the petitioner's January 20, 2016 BadgerCare (BC) Plus application, due to income above the BC income limit of \$980.83 for one, due to unearned income distributions from her IRA account at [REDACTED].

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] ESS

Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County.
2. On January 20, 2016, the petitioner applied for BadgerCare (BC) Plus benefits at the county agency.
3. The county agency sent a January 21, 2016 Notice of Proof Needed to the petitioner requesting verification of her unearned income distributions received from her IRA account at [REDACTED].
4. The petitioner's IRA distributions are irregular and not constant each month.
5. The petitioner received \$21,889 from her IRA during 2015, which averages \$1,824.08 per month during that 12 month budgeting period of 2015.
6. The BadgerCare (BC) Plus income eligibility limit for a household of one was \$980.83 for January, 2016, and increased to \$990 as of February, 2016.
7. The county agency sent a February 22, 2016 Notice of Decision to the petitioner stating that her BC application was denied, due to household income above the BC income eligibility limit.
8. In her March 29, 2016 detailed closing argument, ESS [REDACTED] stipulated that petitioner was eligible for BC for the one month of January, 2016 (because no IRA distribution during that month), but was then not eligible for BC as of February, 2016 due to receiving a \$7,500 distribution from her IRA account.

### DISCUSSION

During the March 24, 2016 hearing, petitioner explained that her income is irregular and fluctuates, and argued that such irregular income should thus not be counted. The petitioner is incorrect. The BadgerCare Plus Handbook indicates that if income fluctuates to the extent that a 30 day period alone cannot provide an accurate indication of anticipated income, the agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. To average widely fluctuating income, use the household's anticipated income including fluctuations anticipated over the certification period. BadgerCare Plus Handbook, sec. 16.4.4 and 16.4.5.

In this case, Ms. [REDACTED]'s income fluctuated widely even within the first two months of January and February, 2016. See Finding of Fact #8 above. As a result, the county agency correctly followed BC policy to use the petitioner's 2015 IRA distributions to provide a more accurate representation what her anticipated unearned income would be for this 2016 certification period. The verification confirms that petitioner's unearned income from her IRA distributions was \$21,889 for 2015 which is \$1,824.08 (\$21,889 divided by 12 months). Therefore, the petitioner's monthly unearned income of \$1,824.08 was above the income eligibility limit of \$990 as of February, 2016. As indicated in Finding of Fact #8 above, ESS [REDACTED] stipulated that petitioner was eligible for BC for the one month of January, 2016 (because no IRA distribution during that month), but was then not eligible for BC as of February, 2016 due to receiving a \$7,500 distribution from her IRA account. The petitioner was unable to provide any reliable evidence to refute the county agency's case. Accordingly, based upon the above, I conclude that the county agency correctly denied the petitioner's January 20, 2016 BadgerCare (BC) Plus application, due to income above the BC income eligibility limit for one, due to unearned income from her IRA distribution from [REDACTED].

**CONCLUSIONS OF LAW**

1. The county agency representative stipulated that petitioner was eligible for BadgerCare (BC) benefits solely for the month of January, 2016.
2. The county agency correctly denied the petitioner January 20, 2016 BC application as of February, 2016, due to her household unearned income from IRA distributions was above the BC income eligibility limits for a household of one.

**THEREFORE, it is**

**ORDERED**

The matter is remanded to the county agency with instructions to certify the petitioner as eligible for BC benefits solely for the month of January, 2016, within 10 days of the date of this decision. In all other respects, the petition for review 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 28th day of April, 2016

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\sGary M. Wolkstein  
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 April 28, 2016.

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