



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: BCS - 211404

PRELIMINARY RECITALS

Pursuant to a petition filed on December 13, 2023, under Wis. Stat. § 49.45(5)(a), to review a decision by the Washington County Department of Social Services regarding Medical Assistance (MA), a hearing was held on January 17, 2024, by telephone.

The issue for determination is whether the agency correctly terminated Petitioner's BadgerCare Plus (BCP) enrollment, effective November 1, 2023.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Ken Benedum

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County and received BCP benefits.

2. On October 10, 2023, Petitioner informed the agency that her income included a total of \$185.84 per month from [REDACTED], and a \$1,993.47 per month in long-term disability payment while Petitioner's long-term disability claim was processed. Petitioner's gross monthly income was \$2,179.31 per month and her annual income for 2023 was calculated to be \$14,850.08.
3. On October 16, 2023, the agency sent a notice to Petitioner informing her that her enrollment in BCP would be terminated, effective November 1, 2023. The termination was due to an increase in her unearned income from the long-term disability payments, which put her over the income limit to receive benefits.
4. On October 19, 2023, Petitioner contacted [REDACTED] to withdraw her claim for long-term disability. Petitioner stated that the long-term disability payments would put her over the monthly income limit to receive BCP Plus and also reduced her monthly FS allotment. Therefore, she no longer wanted to pursue long-term disability payments.
5. On December 13, 2023, Petitioner filed an appeal of the October 16, 2023, notice informing her that her BCP enrollment would be terminated. At hearing, Petitioner noted that she was not receiving the long-term care disability and therefore that amount should not be counted as part of her income.
6. The agency representative testified at hearing that even if Petitioner was not receiving the long-term disability, that money was available to her but she was choosing not to pursue those payments specifically so that she was eligible for BCP Plus and additional FS benefits. Since the payments were available to her, that income was required to be included in calculating her benefits.

DISCUSSION

BadgerCare+ (BCP) is a state and federal program that provides health coverage for low-income Wisconsin residents. To be eligible for BCP, a person must meet certain non-financial and financial requirements. The income limit for childless adults is 100% of the federal poverty level (FPL). BCP Eligibility Handbook, § 16.1. All taxable gross income is counted. *Id.* If a household's annual income is below 100% of the annual FPL, the household may be eligible for coverage.

BadgerCare+ policy requires that "other income", which includes disability payments, is any payment that a member receives from sources other than employment that are counted as taxable income. BCP Eligibility Handbook § 16.5.11. Policy further requires that the agency count the gross payment in the person's income total. *Id.*

Petitioner does not dispute that with the long-term disability payment included, she is over the income limit. However, Petitioner does not believe that the long-term disability payments should be included in her gross monthly income because she asked to stop receiving long-term disability payments while pursuing her claim because receiving that money put her over the income limit for BCP.

Petitioner believes that since she has declined to pursue long-term disability and asked to cease receiving payments, that she should now be eligible for BCP. However, the BCP Eligibility Handbook is clear that if the payments are available, the agency must include that as income even if the participant chooses not to utilize those payments.

When it is known that a member of the group is eligible for income or an increased amount of income:

1. If the amount is known, count the income as if the person is receiving it.
2. If the amount is unknown, ignore the income.

Example	Marianne is entitled to unemployment compensation benefits of \$430. However, she declined a \$100 increase offered by unemployment compensation, and the amount of her check remains at \$430. Since the full entitlement amount is known, the available income is \$530.
----------------	--

BCP Eligibility Handbook § 16.1.2.

In this case, Petitioner was receiving \$1,993.47 per month while her long-term disability claim was processed. Therefore, the agency knows the amount that Petitioner was receiving. When Petitioner discovered that this amount would put her over the income limit to receive BCP, she contacted Unum and declined to receive the long-term disability or pursue the claim. Even though Petitioner declined the amount, it still must be counted per the regulations noted above.

I do not have the authority to bypass the law that has set forth the income limit or methods of determining gross income. Even if it seems unfair to Petitioner, I cannot deviate from the income requirements established under the law. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977).

CONCLUSIONS OF LAW

The agency correctly terminated Petitioner's BCP effective November 1, 2023 because she was over the income limit.

THEREFORE, it is

ORDERED

That this 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, 4822 Madison Yards Way, 5th Floor North, 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

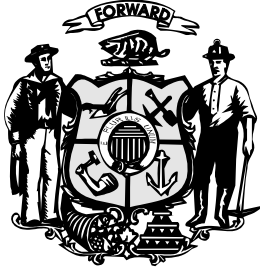
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 8th day of February, 2024

\s _____
Nicole Bjork
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 8, 2024.

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