



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

Case #: BCS - 204450

PRELIMINARY RECITALS

Pursuant to a petition filed on February 14, 2022, under Wis. Stat. § 49.45(5)(a), to review a decision by the Marathon County Department of Social Services regarding Medical Assistance (MA), a hearing was held on March 16, 2022, by telephone.

The issue for determination is whether the agency correctly counted petitioner’s Social Security benefits, which he deposited into an Achieve A Better Life (ABLE) account, as unearned income for determining eligibility for medical assistance.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By:

Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a disabled resident of Oneida County.

2. On September 17, 2019 petitioner and █████ applied for medical assistance and were enrolled in BadgerCare Plus.
3. In December, 2021, the agency received and processed an application for health care that petitioner and █████ filed through the Federally Facilitated Marketplace (FFM).
4. On December 29, 2021, The agency issued to petitioner an About Your Benefits notice informing him that effective February 1, 2022, petitioner was enrolled in Medicaid Purchase Plan (MAPP) with no monthly co-pay limit, rather than in BadgerCare Plus; and that █████ was ineligible for BadgerCare Plus because her monthly income was over the program limit.
5. On January 13, 2022, the agency issued to petitioner a notice informing him that it recently sent him a letter stating that someone in his household would no longer received health care benefits, however, it made a temporary change and, as a result, the person will continue to be enrolled in healthcare during the COVID-19 public health emergency.
6. On February 16, 2022, the Division received petitioner's request for hearing by U.S. Mail, postmarked February 14, 2022.
- 7.

DISCUSSION

Medicaid is a state and federal program that provides health coverage for Wisconsin residents who are elderly, blind, or disabled. In addition to this, Medicaid funds the benefits of most adults and children enrolled in BadgerCare Plus. BCP Handbook 1.1.4. BadgerCare Plus is a state and federal program that provides health coverage for low-income Wisconsin residents. To be eligible for BC+, a person must meet certain non-financial and financial requirements. The income limit for childless adults is 100% of the federal poverty level (FPL). BC+, § 16.1. All taxable gross income is counted. Id. For February 2022, 100% of the FPL was \$1,526/month. BC+, § 50.1. If a household's annual income is below 100% of the annual FPL, the household may be eligible for coverage. The annual FPL limit for February 2022 was \$18,310. Id.

Petitioner's Social Security income is the only income for the assistance group comprised of him and █████. For MA determination, income counted was \$1,660 for █████ and \$1,768 for █████.

Petitioner and his wife █████ testified at hearing that they disagree with the amount of unearned income counted to determine medical assistance eligibility. Petitioner does not dispute that effective January 2022 he received \$1,938 per month in unearned Social Security income but asserts that because he deposits that income into an Achieve a Better Life (ABLE) account, it should be disregarded as income for medical assistance eligibility purposes. An ABLE account is a tax-advantaged account that eligible disabled individuals can use to pay for qualified disability expenses. See SSA Program Operations Manual System (POMS) SI 01130.740, citing Public Law 113-295.

The agency counted petitioner's Social Security income. All taxable income, including Social Security income, is counted when determining BadgerCare Plus eligibility. BCP Handbook 16.1.2. Within each assistance group, all counted and eligible individuals' countable income is budgeted, unless a group member is a child or tax dependent of a counted or eligible member within the same assistance group, his or her income will not be counted. BCP Handbook 2.8. These exceptions do not apply in this case.

The BCP Handbook contains a list of 51 exceptions in a section entitled Income Types Not Counted, including ABLE Accounts. BCP Handbook 16.2, number 48.

The Handbook language regarding ABLE accounts states, in full:

ABLE accounts are tax-sheltered money market savings accounts specifically designed for people with disabilities. Anyone may contribute to these accounts for the disabled beneficiary.

While Wisconsin does not offer residents a state-specific ABLE program, Wisconsin residents may open these accounts in any state where an ABLE program is offered. If an applicant or member has an ABLE account, treat the money in the account as follows:

- Do not count contributions to the account, any interest or dividends earned, or other appreciation in value as income.
- Exempt all distributions from these accounts to the beneficiary as long as they are for qualified disability expenses. "Qualified disability expenses" means any expenses related to the eligible person's blindness or disability that are incurred for the benefit of an eligible person who is the designated beneficiary. This includes the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses consistent with the purposes of the ABLE program. Unless the person reports that a distribution was used for nonqualifying expenses, it should be assumed that the distribution was used for qualified disability expenses.

ABLE account funds remaining after a member's death are subject to estate recovery.

PCP Handbook 16.2, number 48.

Petitioner misconstrues this language to mean that income he receives that is otherwise countable is disregarded once he places it in an ABLE account. The Social Security benefit is countable income paid to petitioner, before it is put in the ABLE account. Non-income contributions to ABLE accounts do not become income when contributed. The income that petitioner received money cannot be counted twice because of the use of an ABLE account and the agency has not done that.

The BCP Handbook is consistent with the Social Security Administration Program Operations Manual System (POMS) for ABLE accounts explaining when ABLE account contributions are counted as income for SSI applicants and recipients is consistent with this, stating that "(t)he fact that a person uses his or her income to contribute to an ABLE account does not mean that his or her income is not countable for SSI purposes as it normally would be. Income received by the designated beneficiary and then deposited into his or her ABLE account is income to the designated beneficiary." POMS SI 01130.740 (C)(1).

In summary, contributing to an ABLE account does not change the way BCP or other means-tested benefit programs count earned or unearned income deposited into the ABLE account. The ABLE account is not intended to allow petitioner to exclude income from counting, rather it allows him to increase assets without becoming ineligible for means-tested benefits on that basis. There is no asset limit for BCP, therefore petitioner's ABLE account has no effect for this program. BCP Handbook 20.1.

The agency did not submit a BCP budget, however, there is no evidence that any aspect of its calculations was incorrect and petitioner's only dispute is regarding the income deposited to the ABLE account. The agency correctly counted petitioner's household income for purposes of determining the assistance

group's eligibility for medical assistance. Because petitioner received a disability determination, he is subject to Medicaid rules and is enrolled in Medicaid Purchase Plan (MAPP). [REDACTED] was found ineligible for medical assistance altogether due to income. It is noted that she continues to receive the benefit because of special rules arising from the COVID19 public health emergency.

Petitioner did not claim any other error in the agency's determination and I found none. Based on this record, I find that the agency correctly determined petitioner's and [REDACTED]'s medical assistance eligibility effective February 1, 2022.

CONCLUSIONS OF LAW

- 1) Petitioner's Social Security benefits are countable unearned income for medical assistance purposes, regardless of whether he deposits the income into an ABLE account.
- 2) The agency correctly counted petitioner's household income and correctly determined that he and [REDACTED] were not eligible for BCP.

THEREFORE, it is

ORDERED

That the petition for review 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).

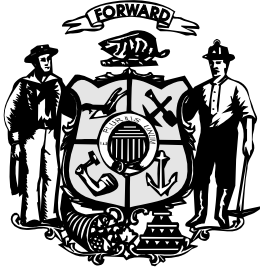
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 29th day of March, 2022



\s _____

Beth Whitaker
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 March 29, 2022.

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