



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: BCS - 210493

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on September 29, 2023, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on November 16, 2023, by telephone. The hearing was rescheduled once to ensure that Petitioner had ample opportunity to review the agency's exhibits.

The issue for determination is whether the agency properly terminated Petitioner's BadgerCare Plus (BCP) eligibility based on a finding that his income exceeds the income eligibility limit.

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: Michelle Olesgun  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Teresa A. Perez  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 63-year old resident of Milwaukee County who received BadgerCare Plus as a one-person assistance group from at least April 2018 through September 2023.
2. Petitioner files taxes as a single person / head of household and is not claimed by a tax dependent by anyone outside of his home.
3. Petitioner has withdrawn \$3,200 from a traditional IRA that he owns every month since June 2023 and intends to continue doing so. He uses this monthly withdrawal to pay for his living expenses.
4. On September 18, 2023, the agency notified Petitioner that his BadgerCare Plus would end as of October 1, 2023 because his income exceeded the program limit.
5. On September 29, 2023, Petitioner filed a request for a hearing regarding the termination of his BCP benefits.

## DISCUSSION

To be eligible for BCP, individuals must have income that is less than the applicable program income limit. Parents and caretakers of minor children as well as childless adults are subject to an income limit of 100% of the federal poverty level (FPL). *BadgerCare Plus Eligibility Handbook (BCP Handbook)* §16.1.1. Generally, the test group size of a tax filer who is not being claimed as a tax dependent by another individual includes himself, his spouse (if any), and all of his tax dependents. *BCP Handbook* §2.3 and 42 C.F.R. §435.603(f)(1).

Here, the agency asserted that Petitioner's countable monthly income for purposes of determining BCP eligibility is \$3,200, the amount of his ongoing monthly IRA withdrawal, and that he is a one-person test group. Effective February 1, 2023, 100% FPL for a one-person test group is \$1,215 per month (\$14,580 per year). The agency therefore determined that Petitioner's income disqualifies him from BCP eligibility.

Petitioner argued that the money that he is withdrawing from his IRA was money that he set aside for his retirement and pointed out that if he has to apply for health insurance through the marketplace, he will have to increase his withdrawals to afford the premiums and that would in turn increase his countable income under BCP rules. Petitioner thinks it is unreasonable to consider the withdrawals from his IRA to be income. Petitioner did not however dispute that he is withdrawing the same amount from his IRA each month and that he intends to continue doing so.

Countable household income for BadgerCare is determined by calculating "modified adjusted gross income" (MAGI). See 42 C.F.R. §435.603(d) and (e); see also *BCP Handbook* §2.3 and §16, et. seq. The taxable portion of any retirement distribution is considered to be countable income and must therefore be included when calculating eligibility for BCP. *BCP Handbook* §§16.4, 16.4.3.3, and 16.5 Para. 10. Lump sum payments, if the payment is otherwise a countable income type, are included when determining income eligibility for BCP but are to be counted only in the month received. *BCP Handbook* §16.2 Para. 35 and 42 C.F.R. §435.603(e)(1).

Based on the above policies, I find that the agency correctly determined that his IRA withdrawals are countable BCP income.

**CONCLUSIONS OF LAW**

- (1) Because Petitioner withdraws \$3,200 from his traditional IRA each month and intends to continue doing so, the taxable portion of those withdrawals is countable in determining his BCP eligibility.
- (2) Petitioner’s countable income exceeds the applicable BCP income limit.

**THEREFORE, it is**

**ORDERED**

That 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, 4822 Madison Yards Way, 5<sup>th</sup> 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**

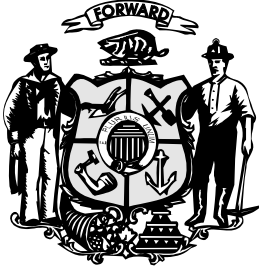
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 9th day of January, 2024



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Teresa A. Perez  
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 9, 2024.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability