



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCC/142514

PRELIMINARY RECITALS

Pursuant to a petition filed July 23, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a hearing was held on September 20, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency met its burden to show that it correctly discontinued petitioner's BadgerCare Plus Core Plan MA.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Belinda Bridges

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On August 15, 2011 the agency sent a "45 day notice" to petitioner at her address of record stating that she had until September 30, 2011 to complete her renewal.

3. On September 26, 2011 petitioner completed a renewal for her MA benefits under the BadgerCare Plus Core Plan.
4. On September 28, 2011 the agency issued a request for verification of income from employment. The request did not go to petitioner's correct address.
5. At some point the agency terminated petitioner's BadgerCare Plus Core Plan effective October 1, 2011.

DISCUSSION

Medicaid, also known as Medical Assistance, MA, and Title 19, is a state and federal program that helps low income people pay their medical bills. The BadgerCare Plus Core Plan (for adults without dependent children) is a MA program that provides basic health care coverage to adults who do not otherwise qualify for Medicaid or the BadgerCare Plus Standard or Benchmark Plans. *BadgerCare+ Eligibility Handbook*, §43.1. This Handbook governing this program is available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

MA recipients must verify their income. Wis. Adm. Code, §DHS 102.03(3)(a). Applicants must verify information within 30 days of the date they applied for benefits, or 10 days from the date the agency requests them to do so, whichever is later. *BadgerCare Plus Eligibility Handbook*, §9.2, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>. However, it is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. In this case, the burden falls on the agency to show that it correctly sought to terminate her benefits. However, before a negative action is taken by a county agency, the agency must mail an adequate notice of the action at least ten days before the effective date of the action. See *BadgerCare Plus Eligibility Handbook*, §29 and *Income Maintenance Manual*, §3.2.2 (available online at <http://www.emhandbooks.wisconsin.gov/imm/imm.htm>). It is the responsibility of the county agency to provide a copy of this notice to demonstrate that such notice was, in fact, issued by the agency within the requisite timeframe.

Here, not only do I find petitioner's direct testimony to be credible and consistent, the evidence produced at hearing shows that the agency did not send the request for verification to her correct address of record and failed to produce any notice terminating the Core Plan. It was a curious situation with the agency's computer system evidently, and incorrectly, populating in a P.O. Box for her address in some notices it sent to the petitioner, and at other times using her correct address. Ultimately, however, she lost her MA because it chose to send some of its information to the incorrect address.

Based on the foregoing, I find that the county has not met its burden to support the discontinuance of petitioner's MA. It is the agency's burden to show that it sent the information to her correct address of record and it did not do that. I therefore am remanding this matter to the agency with instructions to continue processing her renewal. I am adding days to the time in which to comply with this Order should verification be needed and properly requested. The agency is also instructed to remove this P.O. Box from petitioner's case file.

CONCLUSIONS OF LAW

The agency has not met its burden to show that it correctly terminated petitioner's BadgerCare Plus Core Plan effective October 1, 2011 due to failing to verify income.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions that within 10 days of the date of this decision it continue to process the petitioner's renewal application for the BadgerCare Plus Core Plan effective October 1, 2011. In the event that verification of information is necessary to complete the renewal, I am adding 20 days to the time to comply with this Order so that verification can be properly accomplished. If no verification is necessary, the agency shall recertify her for the BadgerCare Plus Core Plan effective October 1, 2011, if eligible. The agency shall issue a notice of decision to petitioner regarding her BadgerCare Plus Core Plan eligibility for October 1, 2011 and onward, ensuring that it is mailed to her correct address of record. The agency is also ordered to remove the incorrect address (the P.O. Box) from petitioner's case file.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted. The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of September, 2012

Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

c: Milwaukee Enrollment Services - email
Department of Health Services - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 24, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability