



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCS/142931

PRELIMINARY RECITALS

Pursuant to a petition filed August 07, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on September 18, 2012, at Racine, Wisconsin.

The issues for determination are 1) whether petitioner's appeal was timely filed and 2) whether the agency met its burden to show that it correctly processed petitioner application for MA effective July 1, 2012, 2012.

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: Kathy Christman

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On March 27, 2012, the agency sent a written notice of negative action to the petitioner. The negative action in this case was discontinuance of BCP for parents due to being over 200% FPL and children eligible for BCP with a premium effective April 1, 2012. Exhibit 8.
3. In determining BCP eligibility for April 2012 the agency included gross monthly income of \$4071.09. This level of income caused the petitioner and her husband to be financially ineligible for BC, as their income exceeded 200% of the FPL. Their income slightly rose above that April level every month thereafter through September. See Exhibit 1.
4. The petitioner is disabled.
5. On or about July 1, 2012 the petitioner reapplied for MA.
6. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on August 7, 2012.

DISCUSSION

1. Timeliness for March notice.

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal of the March 27, 2012 notice was filed 133 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case as to that issue.

I add the following for petitioner's information in any event. BadgerCare Plus (BCP) is a Wisconsin variant of MA for families with minor children. Wis. Stat. §49.471. Petitioner and her family had been eligible for BCP from April 1, 2011 through March 31, 2012 in an extension status. A BCP extension is a period of eligibility given to a person when the countable household income increases above 100% of the Federal Poverty Level (FPL) for the BCP group size and otherwise meets the BCP eligibility criteria for persons with incomes below 100% FPL. While on the extension, the member is covered under the BCP standard plan without a premium and is not subject to the insurance access and coverage requirements. See *BCP Eligibility Handbook (Handbook)*, §18.1.1, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

When their 12-month extension status was running out, the petitioner completed the necessary review, and at that time it was determined that petitioner's gross monthly income rose above 200% of the FPL for a household of four. In general, all available gross income is counted when determining BCP eligibility, and for parents, the income limit is 200% FPL. See *Handbook*, §16.1. 200% of the FPL for a household of four is \$3,841.67. See *Handbook*, §50.1.

The 2011-13 Wisconsin State Budget, Act 32, required the Department to pursue eligibility changes to the Medicaid program. In order to comply with Wisconsin law and make the necessary eligibility changes, Wisconsin requested changes to its current BCP waivers for families and childless adults. The Centers for Medicare and Medicaid Services (CMS) approved changes to BCP policy which include premium reforms, Restrictive Re-enrollment (RRP) reforms, changes to the policy regarding access to health insurance and changes to the back dating policy. See BEPS/DFS Operations Memo no. 12-27, dated June 1, 2012, page 1, available online <http://www.dhs.wisconsin.gov/em/ops-memos/2012/pdf/12-27.pdf>.

Effective July 1, 2012, the Department began to use a sliding scale for determining premiums for non-pregnant, non-disabled adults with income over 133% of the Federal poverty limit. Under the old policy adults did not pay premiums unless income was over 150% of the poverty limit. See BEPS/DFS Operations Memo no. 12-25, dated April 27, 2012, page 2. The April 27 Memo showed the scale and ranges for the premiums. I provide this information due to the confusion she expressed at hearing about receiving information about this change.

Finally, I add that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

2. July application

All applications for BCP or MA that are received by an agency must be processed and eligibility approved or denied as soon as possible but no later than 30 calendar days from the filing date. This includes issuing a notice of decision. See *Handbook*, §25.7 and the *Medicaid Eligibility Handbook*, §2.7.1, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

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 properly processed her July application and issued a notice regarding her eligibility within the requisite timeframe.

No notice was presented at hearing or post-hearing that shows that this July application has been acted upon. There was some testimony that petitioner should be eligible for MA as a disabled person, with a deductible, and that assets need to be verified. However, documentation showing any of that after her July application was not provided. Based on the foregoing, I find that the agency has failed to meet its burden to show that it acted correctly on the July application. I am going to remand the matter so that petitioner's eligibility can be redetermined back to her original filing date. I will add days to the Order so that any verifications needed may be requested during said processing.

CONCLUSIONS OF LAW

1. There is no jurisdiction as the appeal is untimely as to the notice of March 27, 2012.
2. The agency failed to meet its burden to show that it correctly processed petitioner's application made on July 1, 2012 or issued a notice of decision regarding same.

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 process the petitioner's July 1, 2012 application for MA. In the event that verification of information is necessary to complete the process, I am adding 20 days to the time to comply with this Order so that verification can be properly accomplished. The agency shall thereafter issue a notice of decision to petitioner regarding her July 1, 2012 application.

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 5th day of October, 2012

Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

c: Racine County Department of Human Services - email
Department of Health Services - email



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The preceding decision was sent to the following parties on October 5, 2012.

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