



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]

DECISION

BCS/143118

PRELIMINARY RECITALS

Pursuant to a petition filed August 16, 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 October 09, 2012, at Racine, Wisconsin.

The issue for determination is whether the agency correctly determined petitioner's household MA benefits effective July 1, 2012 and September 1, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]

Respondent:

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

By: Kathy Christman

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

ADMINISTRATIVE LAW JUDGE:

Kelly Cochran
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner has been receiving MA for her household of two since at least May 2012.
3. On June 11, 2012 the agency issued a notice of decision to petitioner stating that effective July 1, 2012 she would be eligible for MA with a premium of \$94 effective July 1, 2012. Petitioner's budgetable monthly household income was \$2081.63.
4. Effective July 1, 2012, BC+ eligibility was based upon a change in Department policy.
5. On August 6, 2012 the agency received an alert that petitioner's child support payments had increased and updated petitioner's case.
6. On August 13, 2012 the agency issued a notice of decision stating that effective September 1, 2012 petitioner's MA premium would increase to \$106. Petitioner's budgetable monthly household income was \$2170.16.

DISCUSSION

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 BC+ waivers for families and childless adults. The Centers for Medicare and Medicaid Services (CMS) approved changes to BC+ 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 at <http://www.dhs.wisconsin.gov/em/ops-memos/2012/pdf/12-27.pdf>.

Effective with July, 2012 BC+ benefits, 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 (FPL). Under the old policy adults did not pay premiums unless income was over 150% of the FPL. See *BEPS/DFS Operations Memo no. 12-25*, dated April 27, 2012, page 2, available online at <http://www.dhs.wisconsin.gov/em/ops-memos/2012/pdf/12-25.pdf>. The April 27 Memo showed the scale for the premiums. For a family size of two, income in the range of \$1,891.25 - 2,143.41 would result in a premium between \$76 - 96. This is seemingly where petitioner's problems began, as she argues that the cost of the premium was consistently increasing and she was not able to budget for those amounts in the short time period in which she was advised she would have to pay them.

Petitioner's undisputed household income totals \$2081.63 for the July time period. This is between 150%-185% of the FPL for a two-person household. See *BC+ Handbook*, §50.1. Based upon the new policy the agency correctly determined a \$94 premium effective July 1, 2012 based upon monthly income. Because this is a state-wide change, the Division of Hearings and Appeals does not have authority to find the change to be invalid or that petitioner should be exempt from the change.

Additionally, when the agency became aware of the increase in unearned income through child support, it was required to act upon that change and update petitioner's case. See *BC+ Handbook*, §27.4. It therefore properly updated her case in early August, found monthly income had increased, and issued a new notice stating that effective September 1, 2012 petitioner's MA premium would increase to \$106. Petitioner's budgetable monthly household income was \$2170.16. According to the April 27 Memo, income in the range of \$2,143.42 - 2,521.66 would result in a premium between \$105 - 146. Based again upon the policy, the agency correctly determined a \$106 premium effective September 1, 2012 based upon monthly income. Again, because this is a state-wide change, the Division of Hearings and Appeals does not have authority to find the change to be invalid or that petitioner should be exempt from the

change. I can find no error in the agency's computations or that they failed to properly notice petitioner of these changes to her case.

There are no other exceptions that I could find that would show me that petitioner is somehow exempt from paying the premium, or that it could be changed based on fairness. I certainly understand that affording the premium can be difficult, and even impossible. However, administrative law judges do not have the power to address issues of equity. 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. We are required to apply the law as written by the legislators.

CONCLUSIONS OF LAW

The agency correctly determined petitioner's household MA benefits effective July 1, 2012 and September 1, 2012.

THEREFORE, it is

ORDERED

That the petition for review herein be dismissed.

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, 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 22nd day of October, 2012

Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

c: Division of Health Care Access and Accountability, DHSADHCAA@Wisconsin.gov -
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The preceding decision was sent to the following parties on October 22, 2012.

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