



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCS/143509

PRELIMINARY RECITALS

Pursuant to a petition filed August 30, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on October 16, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in determining that petitioner was not eligible for BadgerCare Plus effective September 1, 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
Madison, Wisconsin 53703

By: Pamela Hazely

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In August 2012, petitioner was living in the home with his child and his wife. Petitioner's wife was employed and has health insurance available to the family. Petitioner's employer would pay at least 80% of the premium for that health insurance. The insurance would be available to begin in November 2012. Petitioner's household income exceeded 150% of the federal poverty level.

3. The Department sent notice to petitioner on August 20, 2012 informing him that BadgerCare Plus would be terminated because other insurance was available to the family.
4. Petitioner filed a timely appeal.

DISCUSSION

A person is not eligible for BadgerCare Plus when other insurance is available and certain other conditions are met:

7.3.2 The 80% Current Access Test

Individuals with access to health insurance, including access due to a qualifying event, through an employed family member who is currently living in the household are not eligible for BC+ benefits if:

1. The access is to a HIPAA health insurance plan through a current employer for which the employer pays at least 80% of the premium or the State of Wisconsin's health care plan (regardless of plan type, or premium amount contributed by state or local government);
and
2. The applicant/member is a caretaker relative or child under age 19 and the caretaker relative or child is not exempt; **and**
3. The coverage would begin within three calendar months following:
 - a. The month of BC+ application filing date; **or**
 - b. Annual review month; **or**
 - c. Employment start date

The employed BC+ member and anyone else who could have been covered by the health insurance plan are ineligible for BC+ benefits. Children under 19 years of age can become eligible by meeting a deductible. (See Ch. 17)

There are no good cause reasons for not enrolling in a health insurance plan when an individual has current access.

BadgerCare Plus Eligibility Handbook § 7.3.2.

In this case, petitioner concedes that all the conditions are met for this test. He makes two specific arguments. First, he argues that even with the employer paying 80% of the premium, the family still cannot afford the insurance. Second, he argues that with the termination being in September and the employer's insurance enrollment as of November, there would be a lapse. Petitioner, essentially, argues that application of the rule is not fair in his case. I do not have authority to decide issues based on equity. Case law in Wisconsin has recognized that the powers of administrative agencies are limited to those expressly granted by the legislature or necessarily implied by the statutes. DOR v. Hogan, 198 Wis. 2d 792, 816, 543 N.W.2d 825 (1995). The legislature has not expressly conferred equitable powers upon administrative agencies. Administrative agencies are required to accord "fair hearings" in the sense that they must accord due process with an even handed application of the law to the facts in similar cases. Neither the statutes nor case law clearly accord administrative agencies equitable powers. I conclude that even if the argument is based on equity, I do not have the authority to exercise equitable powers. My task is to determine whether the Department committed an error in application of the existing law and rules to this case. It did not.

CONCLUSIONS OF LAW

The Department did not err in its termination of BadgerCare Plus for this petitioner effective September 1, 2012 due to other insurance being available to the household.

THEREFORE, it is

ORDERED

That this appeal is 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 Madison,
Wisconsin, this 16th day of October, 2012

John P. Tedesco
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 October 16, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability