



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCC/143650

PRELIMINARY RECITALS

Pursuant to a petition filed September 04, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance, a hearing was held on September 27, 2012, at Neenah, 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
Madison, Wisconsin 53703

By: Mary Maynard

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner had a Badger Care Plus Core Plan review due in June, 2012. On July 5, 2012, he contacted the respondent to report that he had moved, and had been unable to timely complete the review. Exhibit 2.

3. Petitioner's review was completed by telephone on July 9, 2012. At that time, petitioner reported that he would be receiving monthly payments from a settlement regarding a Worker's Compensation matter. As such, he indicated that his Worker's Compensation would be ending. Exhibit 2.
4. Verification of several items as well as the Core plan fee payment were due by July 19, 2012. The Request for Verification form, signed by respondent (7/9/2012) and petitioner (7/10/12), specifically lists "end date for workman's compensation" among the verification items enumerated. The form also notes that "[s]uggested items to use for verification are listed on the back of this form." See, Exhibit 2. The back of the photocopied form submitted with Exhibit 2 is blank.
5. On July 12, respondent received several documents, but determined that none of them verified Worker's Compensation ending. Exhibit 2.
6. On July 20, 2012, respondent denied petitioner's application, and sent notice to petitioner stating that the denial was due to petitioner's failure to provide proof of answers to the agency. The notice advises petitioner to "... See the "Notice of Proof Needed" that was sent to you for more information. Exhibit 2. Respondent did not submit into evidence at or prior to hearing a Notice of Proof Needed.

DISCUSSION

The authority for requiring verification in general is found in Wis. Admin. Code, § DHS 103.03(1), which requires agencies to deny medical assistance "when the applicant or recipient is able to produce required verifications but refuses or fails to do so." The regulation goes on to state that if "the applicant or recipient is not able to produce verifications, or requires assistance to do so, the agency may not deny assistance but shall proceed immediately to verify the data elements." Finally, Wis. Admin. Code, § DHS 103.03(3) requires verification of the following items:

- (a) Income;
- (b) Pregnancy, including a pregnancy which is the basis of nonfinancial eligibility under s. DHS 103.03 (1) (b) 1.;
- (c) Incapacitation which is the basis of nonfinancial eligibility, unless incapacitation is presumed to exist according to s. DHS 103.03 (1) (e);
- (d) Social security number;
- (e) Age;
- (f) Citizenship or alien status;
- (g) Disability, blindness, or both;
- (h) Assets; and
- (i) Residence.

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 his benefits.

The agency's notification did not advise the petitioner of the specific forms of documentation allowed to verify the end date for Worker's Compensation. Testimony at hearing revealed that neither the respondent nor the petitioner had any clear understanding of what this proof would look like. There is little doubt that

the petitioner was confused by the verification request because he submitted legal pleadings pertaining to his Worker's Compensation case—but nothing else—after being told that the agency did not have proper verification. It does not appear that the agency did anything overtly wrong in this matter, though the verification request could have been more specific. As I write this, and with the entirety of the record available to me, I cannot determine what, exactly, would have constituted proof of the “end date for Worker's Compensation.”

Nevertheless, given the confusion obviously exhibited by the petitioner, along with the fact that he made good-faith attempts to comply with an extremely vague request, I will find that he was unable to properly verify the end date for Worker's Compensation, and that his application must be reinstated pending verification of the end date for Worker's Compensation. The petitioner still has a duty to provide the proper verification. Respondent shall assist petitioner in obtaining said verification by providing a clear description of what is required, including example(s) of what would constitute acceptable verification. Respondent shall provide petitioner with a new Request for Verification that explicitly details the verification it seeks regarding Worker's Compensation. Petitioner shall be afforded 10 days to comply with the Request for Verification. Within 10 days after receiving said verification, respondent shall process the information and provide petitioner with written notice of the approval or denial of his renewal, and any attendant appeal rights.

CONCLUSIONS OF LAW

1. The petitioner was unable to provide the required verification of the end date for Worker's Compensation.
2. The petitioner's BadgerCare Plus Core application must be reinstated pending verification of the end date for Worker's Compensation.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it reinstate the petitioner's BadgerCare Plus Core application. The petitioner must timely provide to respondent proper verification of the end date for Worker's Compensation. Respondent shall assist petitioner in obtaining said verification by providing petitioner with a new Request for Verification, which explicitly details the verification it seeks regarding Worker's Compensation, within 10 days following the date of this Decision. The details of verification shall include a clear description of what is required, including example(s) of what would constitute acceptable verification. Petitioner shall be afforded 10 days from the date of respondent's Request for Verification to comply with the Request for Verification. The agency may discontinue petitioner's BadgerCare Plus benefits if the petitioner does not submit proper verification in a timely manner. Within 10 days after receiving verification, respondent shall process the information and mail to petitioner written notice of the approval or denial of his renewal, and any attendant appeal rights.

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 served and 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 13th day of November, 2012

Peter McCombs
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 November 13, 2012.

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