



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCS/144185

PRELIMINARY RECITALS

Pursuant to a petition filed September 26, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a hearing was held on October 31, 2012, at La Crosse, Wisconsin.

The issue for determination is whether the county agency met its burden of proof to establish that it correctly discontinued the petitioner's BadgerCare Plus benefits effective September 1, 2012, because she has access to private 80% subsidized health insurance from her employer **and** her household income exceeded 150 percent of the Federal Poverty Limit (FPL).

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: Tom Miller, supervisor, Western Region Consortium
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County who resides in a household of two (petitioner and her child). She received BadgerCare Plus (BC+) benefits solely for herself.
2. The county agency did not provide sufficient reliable employment or income information for the petitioner in order to confirm whether petitioner's household income exceeded 150 percent of the Federal Poverty Limit (FPL).
3. The petitioner completed her BC review on August 27, 2012.
4. The petitioner's employer, REM Wisconsin, provided her with access to private health insurance (three different plans administered through United HealthCare) in which the employer offered to pay 80% of the monthly premiums; and the petitioner does not contest that access to private insurance.
5. The county agency issued a Notice to the petitioner informing her that her individual BC+ coverage would discontinue effective September 1, 2012, because she had access to health insurance from an employer that pays at least 80% of the cost of the premium **and** petitioner's household income was above the 150% Federal Poverty Limit (FPL).
6. 150% of FPL for a household of two is \$1,891.25.

DISCUSSION

BadgerCare Plus is an expansion of the Wisconsin Medical Assistance program meant to provide insurance for children under 19 and their parents. *BadgerCare Plus Eligibility Handbook (BCPEH)*, 1.1. There are two major BCP benefit plans. To be eligible for the BCP Standard Plan (full MA benefits), a family cannot have income greater than 200% of the federal poverty line (FPL), and cannot have access to a certain level of employer-based coverage. Wis. Stats. §49.471(8). The BCP Benchmark Plan (limited services) is available to children in households with income above 200% of the poverty line, and to self-employed parents/caretakers. See *BCPEH* at §50.1.

Further, Wis. Stat. §49.471(8) states that a family is ineligible if it has, or has access to, employer-subsidized health care coverage. The Wisconsin Administrative Code §DHS 103.03(1)(f)2, and the *BCPEH*, 7.3, state that a family is ineligible if it is covered by and has "access" to *any* health insurance plan that meets the standard of the Health Insurance Portability and Accountability Act (HIPAA), **and has income exceeding 150% of the FPL**. A HIPAA plan is any group plan that provides medical care to individuals and/or their dependents. Wis. Stat. §49.471(1)(g). However, minor children may still qualify for BC+ with a deductible computation.

The petitioner is not disputing that she has access to private health insurance, but is basically disputing that her household income is above the 150% FPL of \$1,891.25 for a household of two. The petitioner also explained that it is financially difficult for her to pay her employer's private health insurance premiums. During the hearing the county representative alleged, without documentation, that petitioner's employee premium for employer health care would not have cost more than 9.5% of her household's income. However, the county did not establish the amount of petitioner's household income and whether the household income was in excess of 150% FPL. Therefore, there is insufficient evidence in the hearing record to determine whether petitioner's household income was or was not above the 150% income limit of \$1,891.25.

Wisconsin law provides as follows:

(8) HEALTH INSURANCE COVERAGE AND ELIGIBILITY

(b) Except as provided in pars. (c) and (d), **an individual whose family income exceeds 150 percent of the poverty line is not eligible for BadgerCare Plus if any of the following applies:**

- 1. The individual has individual or family health insurance coverage that is any of the following:
 - a. Coverage provided by an employer and for which the employer pays at least 80 percent of the premium.
 - 2. The individual, in the 12 months before applying, had access to the health insurance coverage specified in subd. 1. ...

(d)1. None of the following is ineligible for BadgerCare Plus by reason of having health insurance coverage or access to health insurance coverage:

- a. A pregnant woman.
- b. [a child under age one] ...
- 2. An individual under par. (b)2., or an individual who is an unborn child or an unborn child’s mother under par. (c)2., is not ineligible if any of the following good cause reasons is the reason that the individual did not obtain the health insurance coverage under par. (b)1. to which they had access:
 - a. The individual’s employment ended.
 - b. The individual’s employer discontinued health insurance coverage for all employees.
 - c. [A family member was] eligible for other health insurance coverage ... at the time the employee failed to enroll in the health insurance coverage under par. (b)1. and no member of the family was eligible for coverage under this section at that time.
 - d. The individual’s access to health insurance coverage has ended due to the death or change in marital status of the subscriber.
 - e. Any other reason that the department determines is a good cause reason.

Wis. Stat. §49.471(8). The parallel state code provision echoes the statute on this issue. Wis. Admin. Code §DHS 103.03(1)(f)3.

Applying the statute and rule to the facts of this case, I must conclude that there is insufficient evidence in the hearing record to determine whether or not the county agency correctly discontinued the petitioner’s BadgerCare Plus coverage effective September 1, 2012, because she has access to private 80% subsidized health insurance from her employer, **and** her household income exceeded 150 percent of the Federal Poverty Limit (FPL).

CONCLUSIONS OF LAW

The county agency needs to re-determine whether it correctly discontinued the petitioner’s BadgerCare Plus coverage effective September 1, 2012, because she has access to private 80% subsidized health insurance from her employer, **and** her household income exceeded 150 percent of the Federal Poverty Limit (FPL).

THEREFORE, it is

ORDERED

The matter is remanded to the county agency with instructions to re-determine the petitioner’s household’s BadgerCare Plus eligibility retroactive to September 1, 2012; and b) issue to the petitioner a new notice of decision indicating the petitioner’s BC Plus eligibility retroactive to September 1, 2012, within 10 days of the date of this Decision.

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 10th day of December, 2012

\sGary M. Wolkstein
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 December 10, 2012.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability