



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

BCC/144270

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 01, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a telephone hearing was held on October 31, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner is entitled to a refund of her September, 2012, BC+ Core Plan premium of \$126 because the agency did not process her September 17, 2012, late payment until October 22, 2012, at which point she was certified retroactive to October 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: Mary Hartung, Income Maintenance Specialist - Advanced  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kenneth D. Duren, Assistant Administrator  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is married, but she is certified for MA BadgerCare Plus Core Plan as an individual, and was so certified in September, 2012.

2. The petitioner was required to make a \$126 premium payment for continued BC+ Core Plan benefits by September 10, 2012.
3. The Department did not receive the premium payment until September 17, 2012, and for reasons unknown it was not processed prior to October 1, 2012, to continue her eligibility for BC+ Core Plan for October, 2012.
4. Rather, on September 18, 2012, the Department issued a Notice to the petitioner informing her that it had discontinued her eligibility for MA-BC+ Core Plan, effective October 1, 2012, because she had failed to pay her premium by the due date; and that she would be subject to a 12 month restrictive re-enrollment period.
5. The petitioner attempted to procure medical services in early October, 2012, and was informed by her HMO that she was not covered by MA BC+ Core Plan at that time.
6. On or about October 22, 2012, the petitioner contacted the Department's agent to complain about the lack of her coverage, and the Department contacted the statewide BadgerCare Unit and confirmed that the premium was paid, received late on September 17, 2012, but her MA coverage had not been reinstated. The Department acted on October 22, 2012, to certify the petitioner as eligible for MA retroactive to October 1, 2012.
7. The petitioner filed an appeal on October 1, 2012, simply stating that she was "...requesting a fair hearing..." without identifying her grievance with more particularity at that time. Her benefits were ordered to continue.
8. Subsequent to October 22, 2012, the petitioner paid her October, 2012, \$126 BC+ Core Plan premium too, and she has also been certified as eligible for November, 2012.

### DISCUSSION

Administrative law judges of the Division of Hearings & Appeals do not possess the powers of a court of equity, like a circuit court. Rather, ALJs are limited to following the "four corners" of the law as provided by statutes, rules and caselaw.

Here, the petitioner asserts it was unfair for the agency to have failed to certify her for October, 2012, BC+ Core Plan benefits before October 1, 2012, and that because she was not yet certified in early October, she declined to avail herself of health cares and procedures because she could not afford them without coverage. Coverage was reinstated retroactive to October 1, 2012, on October 22, 2012. The petitioner also admits that her September, 2012, BC+ Core Plan premium was due by September 10, 2012, but hers was not actually received by the Department until September 17, 2012, due to an error she made in the appropriate zip code affixed, causing the payment to have to be remailed by her.

The *BadgerCare Plus Eligibility Handbook* provides for Core Plan premiums, as follows:

**Example 6:** Adverse action is September 16th. ■■■'s September premium was due September 10th. ■■■ has not paid his September premium by September 16th. He pays on September 26th. The case closed effective September 30th. Eligibility for October will be restored and ■■■ will be enrolled October 1. He is not required to pay the October premium until October 10th.

*Badger Care Plus Eligibility Handbook*, §43.7.3.8.

Likewise, when the recipient actually pays the premium later, in October, he or she must pay the October premium as well. The only question is when in October it is due. See, *Ibid*.

The petitioner paid her September premium late, causing a disruption in the regular processing of her case. She was not restored to certification until October 22, 2012, retroactive to October 1, 2012. Under law, and the program, she has been made whole. She asked for, paid for, and was certified for, October, 2012, MA coverage. The fact that she chose not to incur expenses when uncertain that this coverage would come to pass, after making her premium payment late and disrupting her continuity of benefits was a choice that she made. It is not for me to judge it “wise”, or “unwise”. It is true that the agency then failed to restore her as soon as she made the late payment. But ultimately, coverage was seamlessly restored.

The long and short of it is that she has been made “whole” by the Department by the restoration of her eligibility without interruption. If she had incurred medical expenses in the lapse period, coverable services would be reimbursed now. She did not. In any event, her appeal is therefore moot as a matter of fact and law. In addition, there is no adequate remedy prescribed under law for this fact pattern. Her appeal must be dismissed.

### **CONCLUSIONS OF LAW**

That the petitioner’s appeal is moot as a matter of fact and law because the Department retroactively restored her October, 2012, MA –BC+ Core Plan eligibility without interruption, retroactive to October 1, 2012; and no adequate remedy exists at law to do more than restore her coverage certification for the month for which she paid the premium.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be, and the same hereby 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 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 2nd day of November, 2012

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Kenneth D. Duren, Assistant Administrator  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 2, 2012.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability