



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCS/144391

PRELIMINARY RECITALS

Pursuant to a petition filed October 09, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA)/BadgerCare Plus, a hearing was held on November 20, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly discontinued the petitioner's children's BadgerCare Plus (BCP) health insurance due to availability of other health insurance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] (with interpreter [REDACTED])
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Alma Lezama, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. BadgerCare Plus (BCP) is a Wisconsin variant of MA for low-income pregnant women or families with minor children. The petitioner and her husband were not on BCP due to their nonfinancial ineligibility. The petitioner's children were covered by BadgerCare Plus (BCP) until August 1, 2012. Notice of the discontinuance was issued on August 8, 2012, following receipt of verification in connection with a July 2012 case review. The basis for discontinuance was having access to other health insurance.
3. For covered employees, the petitioner's husband's employer, Cast Alloy Wheelabrator, pays at least 80% of the health insurance premium for the employee and family members. See, Exhibit 1.
4. The petitioner did not or could not enroll his children in the employer's health plan during the most recent open enrollment period.
5. The petitioner's gross household income is under 200% of the Federal Poverty Level, so household income is not a barrier to eligibility in general. However, where, as here, the household income exceeds 150% FPL, the household members must not have current or recent past "access" to other health insurance.

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 financially eligible for the BCP Standard Plan (full MA benefits), a family cannot have income greater than 200% of the federal poverty line (FPL). 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. The petitioner's household income does not exceed 200% FPL.

Additionally, there is a hybrid nonfinancial/financial BCP eligibility test related to access to other insurance. If a household's income exceeds 150% FPL, the household cannot be eligible for BCP if it has access to employer-based health insurance. In 2012, 150% of the poverty line for four persons is \$2,881.25. See *BCPEH* at §50.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

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 with income exceeding 150% of the FPL 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). A HIPAA plan is any group plan that provides medical care to individuals and/or their dependents. Wis. Stat. §49.471(1)(g).

So, what is "access?" The statute declares that a family has "access" to other health insurance if the employer is paying at least 80 percent of the premium:

(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.

(emphasis added)

Wis. Stat. §49.471(8). The parallel state code provision and policy handbook section echo the statute on this issue. Wis. Admin. Code §DHS 103.03(1)(f)3; *BCPEH*, §7.3.

None of the facts in the Findings above are in dispute. This employer does, in general, offer health insurance coverage for its employee's children. However, the petitioner argues that the employer will not actually provide any coverage for *her* children because they have a different last name than the fake last name that her husband uses at his job. Specifically, the husband's real name is [REDACTED] but he works as [REDACTED]. The children have the last name of [REDACTED]. This Administrative Law Judge asked why the husband is using a fake name. The answer was that he does not have a Social Security number associated with his real name. This Administrative Law Judge then asked if there was some reason why the husband does not have a Social Security number associated with his real name, and the answer was "no." I conclude that the family's "inability" to get the children covered is a situation of their own making, which they have the ability to fix.

Applying the statute and policy to the facts of this case, I must conclude that the agency acted correctly in discontinuing the petitioner's children's BCP certification in 2012. If the household's income drops below 150% FPL in the future, the petitioner may wish to file a new BCP application.

CONCLUSIONS OF LAW

1. The Department correctly discontinued BCP for the petitioner's children effective August 1, 2012, due to their ability to access other health insurance coverage.

THEREFORE, it is

ORDERED

That the petition 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

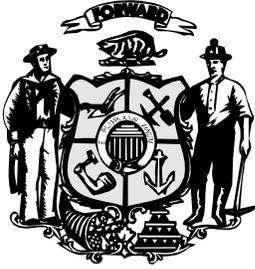
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 20th day of November, 2012

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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

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

The preceding decision was sent to the following parties on November 20, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability