



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

BCS/144604

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 16, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Oneida County Department of Social Services in regard to Medical Assistance, a Hearing was held via telephone on November 20, 2012.

The issue for determination is petitioner's BadgerCare Plus Medical Assistance ["BC+"] was properly closed effective August 1, 2012.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Amy Mayo, ESS

Gina Hart, ESS

Oneida County Department of Social Services  
Oneida Avenue  
PO Box 400  
Rhinelander, WI 54501

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney

Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. Petitioner was receiving BC+; petitioner paid her BC+ monthly premiums consistently until May 2012; she did not pay the May 2012 premium because she had been told over the telephone when she renewed her BC+ that she would no longer have a premium.
3. Petitioner was sent a notice dated June 11, 2012 stating that premiums would be due starting July 1, 2012 (there was no premium for June 2012); due to misdelivery of the mail petitioner never received that notice and did not pay the July 2012 premium.
4. Petitioner's BC+ was closed effective August 1, 2012 because of a failure to pay premiums and she was placed in Restrictive Re-enrollment until July 31, 2013.

### **DISCUSSION**

A BC+MA group that fails to make a premium payment is not eligible for BC+ for a period of at least 6 consecutive calendar months following the date the BC+ eligibility ends unless certain circumstances apply. This is known as a *Restrictive Re-enrollment Period* ["RRP"]. Wis. Stat. § 49.471(10)(b)5. (2009-10); Wis. Admin. Code § DHS 103.085(3)(a) (December 2008); *BadgerCare + Eligibility Handbook* ["BC+EH"] 19.11. The RRP does not apply if, among other things, the failure to pay premiums is due to any circumstance affecting payment of premium that is beyond the group's control (provided that all past due premiums have been paid in full). Wis. Admin. Code § DHS 103.085(3)(b)1. (December 2008); BC+EH 19.8.2.

In this case, petitioner was told, incorrectly, over the telephone when she renewed her BC+ that she would no longer have a premium. Further, due to misdelivery of the mail petitioner never received a notice concerning premiums starting July 2012 and did not pay the July 2012 premium. Petitioner's testimony in these respects is credible. These are circumstances beyond petitioner's control. Therefore, an RRP should not be applied to his case.

Petitioner's BC+ must be reopened retroactive to its date of closure (August 1, 2012) as long as petitioner is otherwise eligible and also pays any outstanding premiums owed. Wis. Admin. Code § DHS 103.085(3)(c)1. (December 2008); BC+EH 19.8.2.

### **CONCLUSIONS OF LAW**

For the reasons discussed above, BC+ must be reopened retroactive to August 1, 2012 as long as petitioner is otherwise eligible and also pays any outstanding premiums owed.

**NOW, THEREFORE, it is**

### **ORDERED**

That this matter be REMANDED to the County and that, within 10 days of the date of this Decision, the County send petitioner a written notice of what BC+ premiums, if any, are due, and reopen petitioner's BC+ retroactive to August 1, 2012 as long as petitioner is otherwise eligible and pays any outstanding premiums owed.

**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 28th day of November, 2012

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\sSean P. Maloney  
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 28, 2012.

Oneida County Department of Social Services  
Division of Health Care Access and Accountability