



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCC/144681

PRELIMINARY RECITALS

Pursuant to a petition filed October 18, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the St. Croix County Department of Human Services in regard to Medical Assistance, a hearing was held on November 29, 2012, at New Richmond, Wisconsin.

The issue for determination is whether the agency correctly ended the petitioner's BadgerCare Plus Core Plan benefits because she failed to complete her reapplication.

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: Cheryl Odle

St. Croix County Department of Human Services
1445 N. Fourth Street
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of St. Croix County.
2. The petitioner was an ongoing recipient of the BadgerCare Plus Core Plan whose renewal was due by August 31, 2012.

3. The petitioner's sister sent an email to the county agency on August 8, 2012, indicating that she was having difficulty getting the proper form to fill out online. Although the renewal was due in August, the agency did not notify her that she had to reapply until September.
4. The reapplication form sent to the petitioner did not contain a signature page.
5. The agency sent a notice to the petitioner on September 18, 2012, stating that in regard to Health Care, "There have been no changes to this benefit."
6. The agency notified the petitioner on October 10, 2012, that it was ending her BadgerCare Plus Core Plan benefits because she failed to sign her application and someone in the household was earning more money. The notice did not indicate that the petitioner failed to complete her Health Needs Assessment. The agency has not submitted any evidence concerning the petitioner's income.

DISCUSSION

The BadgerCare Plus Core Plan expands medical assistance to allow adults without dependent children who would not otherwise qualify for the program to receive benefits. Wis. Stat. § 49.45(23); *BadgerCare Plus Eligibility Handbook*, § 43.2. Each year, those seeking benefits must renew their application and pay a \$60 fee. *BadgerCare Plus Eligibility Handbook*, § 43.4.1. Those who fail to complete all renewal requirements within 12 months of when they previously became eligible are terminated from the program. They can reenroll if they meet all of the program's renewal requirements by the later of last day of the 13th month after most recently being found eligible or 10 days after Enrollment Services requests verification or payment of the \$60 fee. *BadgerCare Plus Eligibility Handbook*, § 43.9.

The county agency notified the petitioner on October 10, 2012, that it was ending her BadgerCare Plus Core Plan benefits because she failed to sign her application and someone in the household was earning more money. Her renewal had been due by the end of August, so October was after the 13th month. At the hearing, the agency also indicated that she failed to complete the health needs assessment, but this was not stated in the notice as a reason for denial. In addition, at the hearing, the agency provided no evidence and did not argue that her income exceeded the program's limit.

These are not the only problems that arose in this matter. The petitioner was aware that she had to renew her application in August, which was demonstrated by an email her sister sent to the agency stating that she was having trouble getting the proper form online and by the fact that she mailed in her \$60 application renewal fee on August 16, 2012. The agency itself never sent the petitioner any of the renewal information until September, meaning that she did not receive it until after it was due. She testified credibly that when she did receive the application form it was missing the signature page. On September 18, 2012, the agency sent her a notice stating that in regard to Health Care, "There have been no changes to this benefit." The agency told her that this simply meant that her benefits had already been denied and that they continued to be denied. This assertion makes no sense because a denial notice had not yet been sent out. It also defies a common sense understanding of how the average person who had been receiving benefits and had not been notified that the benefits were ending would interpret *no changes to this benefit*.

Medical assistance regulations require agencies to notify recipients "before the date upon which the action would become effective" of the "nature of the intended action" and the "reasons for the intended action." Wis. Admin. Code, § DHS 104.01(9)(b)1.a and b. The agency never notified the petitioner of its intended action until after it took that action; the only notice sent before then indicated that her benefits would continue. Moreover, the October notice ending benefits provided two reasons for the denial—failure to sign the application and a change of income—and the agency proved neither. Her one possible error in her reapplication—her failure to complete a health needs assessment—was not listed in the October notice as a reason for denial, so her application cannot be denied on that basis. Because the agency has

established no other legal basis for denying her BadgerCare Plus Core Plan benefits, it must reinstate those benefits.

I wish to make clear that the petitioner has not found a loophole that gives her eligibility she does not deserve. The evidence establishes that she acted responsibly and tried to do everything required of her before her application deadline even though the agency had not yet mailed out notices required of it by law. Her one possible error was not preparing the health needs assessment. She contends that she did not know this was necessary. It was not possible to determine if this was because she overlooked it or because it was never requested. Given the evidence before me, it is not idle speculation that the assessment may never have been requested. But even if it had been requested and she overlooked it, her well-documented, diligent attempts to retain her eligibility indicate that had she been notified that this information was missing, she would have submitted it.

CONCLUSIONS OF LAW

1. The county agency did not notify the petitioner that her benefits were ending before it ended those benefits.
2. The agency has not established that the petitioner improperly failed to sign her BadgerCare Plus Core Plan reapplication or that her income exceeds the program's limit.
3. The agency never notified her that she had not submitted her medical needs assessment.
4. The agency improperly ended her BadgerCare Plus Core Plan benefits.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency within instructions that within 10 days of the date of this decision it reinstate the petitioner into the BadgerCare Plus Core Plan program retroactive to the date his benefits ended.

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 December, 2012

\sMichael D. O'Brien
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 13, 2012.

St. Croix County Department of Human Services
Division of Health Care Access and Accountability