



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCS/144881

PRELIMINARY RECITALS

Pursuant to a petition filed October 30, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Door County Department of Social Services in regard to Medical Assistance, a telephone hearing was held on February 26, 2013, at Madison, Wisconsin. Hearings set for November 28, 2012, and December 18, 2012, were rescheduled at the petitioner's request. At the request of both parties, the record was held open for 10 days for the submission of additional information.

The issue for determination is whether the petitioner is entitled to have past-due premium payments for BadgerCare Plus waived and a restrictive re-enrollment period rescinded.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Attorney Beth Ann Richlen
300 Third Street, Suite 210
P. O. Box 6100
Wausau, WI 54402-6100

Respondent:

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

By: Val [REDACTED], Income Maintenance Worker
Door County Department of Social Services
Door County Government Center
421 Nebraska Street
Sturgeon Bay, WI 54235-0670

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Door County in the period of at least April 1 – August 7, 2012. As of August 7, 2012, she became a resident of Kewaunee County. At all times when she lived in Door County in this period, the biological father ([REDACTED]) of her son,

(██████), their son, and petitioner lived together. After moving to Kewaunee County, the biological father no longer lived with the petitioner and her child. The petitioner and her son are Native American.

2. In April, 2012, the petitioner's son, only, was eligible for BadgerCare Plus, with a \$97.53 per month premium payment due. Prior to April, 2012, the boy had been eligible for BadgerCare Plus without a premium for the five prior months. See, Exhibit #5, Forward Health eligibility screen. On April 2, 2012, the petitioner sent the premium to the Door County agency and it was applied to her son's BC+ case. See, Exhibit #6, Case Comments.
3. ██████ was continuously certified as eligible for BadgerCare Plus with a premium due as a matter of ForwardHealth record, from April 1 – October 31, 2012.
4. On or about April 30, 2012, the Department, by Door County, issued a one-time notice to the petitioner informing her about BadgerCare Plus policy changes that would be effective July 1, 2012. See, Exhibit #6, Case Comments.
5. The petitioner did not pay the premium of \$97.53 that was due for May, 2012, just like in the beginning month of the premium period in April, 2012, which she had paid.
6. On May 18, 2012, the Door County agency issued a Notice to the petitioner informing her that as of June 1, 2012, the petitioner's son would no longer be enrolled in BC+ because the premium due has not been paid, and if it was not paid, he would not be eligible to re-enroll for six months. See, Exhibit #3, attached Notice of Decision of May 18, 2012.
7. On June 13, 2012, the Door County agency issued a second Notice to the petitioner informing her that as of June 1, 2012, her son was enrolled in BC+ in June, 2012, but she must pay a \$97.53 premium for the period of June 1 – 30, 2012, or his BadgerCare Plus benefits will end. The notice also told her that she must pay such a premium every month and that she would receive a premium payment notice in the mail each month. See, Exhibit #3, attachment.
8. On June 18, 2012, the Door County agency issued a third Notice to the petitioner informing her that her son would be disenrolled, effective July 1, 2012, because she had failed to pay his BadgerCare Plus premium; that if she wanted to continue his BC+ benefits she must pay that premium by the end of the month; and that if the premium was not paid by the end of July, 2012, then he would not be eligible to re-enroll in BC+ for the next 6 months. See, Exhibit #3, attachment.
9. On July 27, 2012, the petitioner called the Door County agency and left a voice mail. The assigned worker, Ms. ██████ returned the call and left a reply message informing the petitioner that the June premium was not paid and would need to be paid here and entered into the system by the end of this month or her child would be in a restricted re-enrollment status until the end of the year. See, Exhibit #5, Case Comments.
10. On July 30, 2012, the Door County agency issued a fourth Notice to the petitioner stating that her son was enrolled in BadgerCare Plus in June, 2012, and that she must pay a \$97.53 premium for the period of June 1 – 30, 2012, or he would be in a restricted re-enrollment status for 6 months. See, Exhibit #3, attachment.
11. On July 31, 2012, ██████ ██████, Medical Benefits Coordinator for the ██████ ██████ Health Division of the tribal Health Center, called the Door County agency and informed the Door County worker that the petitioner was a Native American, and as such she should be exempt from having to pay a premium for BadgerCare Plus coverage for her son. Worker ██████ did not check departmental policy, but assumed that ██████ was correct and implemented BC+ coverage for the petitioner's son without getting payment of past due premiums by marking the CARES database to show that June and July, 2012, premiums were "paid" while noting in comments that no payments were due. These premiums were not actually paid.

12. On August 7, 2012, the petitioner contacted the Door County agency and requested that the agency refund all BC+ premiums that she had paid. The worker replied that she had not done so, and indicated she would not and the petitioner could contact the Department's agent for premiums, i.e., Hewlett-Packard, if she desired to pursue this matter.
13. On August 17, 2012, the petitioner called the Door County agency and reported that she and her child had moved to Kewaunee County on August 12, 2012, she reported her new address, and she requested child care assistance.
14. On a date uncertain in mid-August, 2012, the petitioner reported to the Kewaunee County agency that she had moved into that county and required assistance with transferring her ongoing benefits case in Door County.
15. On August 24, 2012, the Door County agency issued a Notice to the petitioner again informing her that her son was eligible for BC+ in October, 2012, and that she must pay a \$97.53 premium for October, 2012. See, Exhibit #2.
16. On October 1, 2012, [REDACTED] Health Center worker [REDACTED] made contact with the Kewaunee County agency by email and stated that the prior county (Door) had not acted on a request for waiver of BC+ premiums and copays for a Native American. However, the Kewaunee County worker, upon reviewing the CARES data, discovered that there should be a premium due because the child is over age 1 and the household income reported was over 300% of the Federal Poverty Level; she confirmed this with the Department's "Help Desk"; and ascertained that a premium had been due in every month since June. See, Exhibit #6, Case Comments.
17. Subsequently, on October 17, 2012, the petitioner completed a phone intake interview with the Kewaunee County agency; provided requested documents by late October, 2012; and ultimately, her son became eligible for BC+ without a premium effective November 1, 2012. See, Exhibit #5, ForwardHealth member screen.
18. At no time between April 3, - October 31, 2012, did the petitioner pay any premium for BC+ coverage for her son.
19. The ForwardHealth screen for [REDACTED] shows that he was continuously eligible for BC+ from April – October, 2012, with a premium obligation. See, Exhibit #5. In November, 2012, he again became eligible without a premium. Ibid.
20. No evidence in this record establishes that premium payment notices were mailed to the petitioner between May 1 – October 31, 2012.
21. At all times between April 1 and August 7, 2012, the petitioner and her son were living with [REDACTED] and had household income in excess of 300% of the Federal Poverty Level.

DISCUSSION

The *BadgerCare Plus Handbook*, § 19.8.3, provides in the parts relevant here, as follows:

19.8.3 Good Cause for Non-Payment

Do not apply an RRP for non-payment if good cause exists. Good cause reasons for not paying the BC premium are:

1. Problems with the financial institution.
2. [CARES](#)  problem.
3. [Local agency](#)  problem.
4. Wage withholding problem.
5. Fair hearing decision.

The member must still pay the arrears before eligibility will begin again.

BadgerCare Plus Eligibility Handbook, §19.8.3

Attorney Richlen asserts that the past due premiums should be waived by the administrative law judge. There is no provision in law or policy for waiving otherwise due premiums under BadgerCare. ALJs do not possess equitable powers. I am bound by the four corners of the law and policy.

Attorney Richlen asserts that the Notice given her client was defective and should make the premium decision void. Implicitly, she seeks rescission of the imposition of the premiums past due.

Here, multiple Notices were provided to the petitioner and in fact she even paid the first premium, i.e., for April, 2012. Under that fact pattern, I find it hard to believe the petitioner when she asserts that she did not know the premium was due, at a minimum, for May and June, 2012. It is, however, clear that no evidence shows that premium payment notices were sent to her or received by her.

Finally, it is likewise clear that at all times from May – August, 2012, the petitioner and her son were Native Americans living in a household with income above 300% of the Federal Poverty Level. Premiums are required under departmental policy for Native American households with income above that limit. See, *BEPS/DFS Operations Memo #11-35*, effective July 1, 2011. Given the relatively high household income in those months, I would also observe that the parents of ██████ *should* have ensured that he remained insured by paying the relatively nominal premiums.

Based upon the foregoing, I conclude that the petitioner had good cause for failing to pay the premiums for the period of May – August, 2012, and no restrictive enrollment period should be imposed; that she must pay all of the premiums past due for these 4 months to have her son entitled to be certified for any of these months as a matter of record, and failure to do so may lead to an overpayment recovery action against her by the Department; and that her son was otherwise eligible for BC+ in September & October, 2012.

CONCLUSIONS OF LAW

- 1) That the petitioner had good cause for failing to timely pay BC+ premiums due for May, June, July and August, 2012.
- 2) That any restrictive re-enrollment period imposed on the petitioner's son as a result of the failure to pay BC+ premiums from May – August, 2012, is to be rescinded as a matter of record.
- 3) That the petitioner must pay past due BC+ premiums to be entitled to coverage for her son from May – August, 2012, or the Department may seek to recover any benefits paid as overpayments.
- 4) That the petitioner's son was eligible for BC+ without a premium effective September 1, 2012, because he no longer lived with his father in the household and the household then had income in Kewaunee County of less than 300% FPL.

THEREFORE, it is

ORDERED

That the matter is remanded to the Door County agency with instructions to: give the petitioner good cause for non-payment of BC+ premiums for the period of May – August, 2012, and lift the restrict re-enrollment period imposed on her and/or her household members; send the petitioner a written demand for payment of past due premiums for these same four months; and certify the petitioner's son as eligible

for BC+ without a premium requirement for September & October, 2012. These actions shall be completed 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 11th day of March, 2013

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



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The preceding decision was sent to the following parties on March 11, 2013.

Door County Department of Social Services
Division of Health Care Access and Accountability
brichlen@judicare.org