



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCS/145007

PRELIMINARY RECITALS

Pursuant to a petition filed October 31, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on November 28, 2012, at Oshkosh, Wisconsin. The parties consented to the Administrative Law Judge's review of the CARES notice history post-hearing (5-day extension).

The issue for determination is whether the Department correctly determined that the petitioner's husband has a BadgerCare Plus (BCP) premium liability for September 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: Leslie Vosters, fair hearing coord.

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. BCP is a Wisconsin variant of MA of low-income households containing minor children or pregnant women. The petitioner's household had ongoing BCP coverage through August 2012. The case was due for a periodic review in August, which was done online on August 13 and again via paper form on August 20, 2012. Prior to September 2012, BCP coverage had not been requested for the petitioner's spouse, [REDACTED].
The August 20 paper review form did not request BCP coverage for [REDACTED]. The agency sent a pre-filled review form to the petitioner on July 17, which did not list [REDACTED] as requesting BCP. The agency has no evidence as to whether or not the petitioner requested coverage for [REDACTED] on the online review form.
3. The relevant notices issued to the petitioner in August and September 2012 all state that [REDACTED] was not getting BCP coverage. See notices dated August 6, August 17, and August 27, 2012. In fact, the notices dated August 17 and 27 specifically declare, "[REDACTED]: The person who applied said that you do not want this benefit."
4. On September 13, 2012, an agency worker entered the BCP coverage request for [REDACTED] and the Department advised that a \$165 monthly premium was due. Coverage was provided for [REDACTED] for September 2012.
5. The household paid the September premium on October 4, believing that it was paying a premium required to cover the petitioner. That premium check bounced, incurring fees. On October 5, 2012, the Department issued a notice to the petitioner advising that [REDACTED] was covered by BCP for September 2012.
6. The household subsequently clarified that it wants coverage for [REDACTED] to begin October 1, 2012, rather than September 2012.
7. The petitioner has no premium liability for herself, as she is disabled and receives Medicare. The agency incorrectly charged the petitioner a premium of \$116 for herself and her children ([REDACTED] not included, not covered) for July and August, 2012. The Department is in the process of refunding the \$116 premiums for July and August to the petitioner.

DISCUSSION

BadgerCare Plus is a Wisconsin variant of MA for families with minor children, and pregnant women. Wis. Stat. §49.471; *BCP Eligibility Handbook (BCPEH)*, § 1.1, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

The income projected to be received by the petitioner's household resulted in a premium liability for any non-disabled adult. Prior to July 2012, premiums were not imposed for adults with income below 150% FPL, but the adult premium threshold was dropped to 133% FPL on July 1, 2012. The new, 133% FPL premium threshold was authorized by the federal government in April 2012, at Wisconsin's request, in an amendment to the BadgerCare §1115 waiver document. *BCPEH*, §19.1 (7/1/12)

The petitioner had to pay a premium in order for [REDACTED] to be eligible for BCP beginning with September. However, the petitioner argues that she did not ask for [REDACTED] to start getting BCP in September, and that she wants it to begin for October, when he lost his other insurance. The Department counters that the petitioner's request to eliminate the September premium liability for [REDACTED] cannot be granted because [REDACTED] has already received the benefit of BCP coverage by the time he asked to disenroll for that month.

Normally I would agree with the Department. Certainly the general principle is that a recipient cannot ask for coverage, receive coverage (even if no services are used), and then ask to be "un-enrolled" after the fact. However, this is a special case, because the preponderance of the evidence supports the petitioner's position that she never asked for [REDACTED] to be covered for September. She had an ongoing case

with [REDACTED] "not covered." There is no evidence that she asked his coverage status to be changed in August or September. So, the Department changed the status quo for no apparent reason. Multiple notices were issued to her saying that [REDACTED] was not covered. It was not until *after* September and after the petitioner sent in an un-needed premium, that the Department issued a notice to her, advising that [REDACTED] was covered for September. It is hard to see what the petitioner was supposed to do differently to avoid coverage for [REDACTED] that she did not want.

Accordingly, the Department will be directed to disenroll [REDACTED] for September 2012, and make the appropriate credits to the petitioner's account to remove any late fees associated with the September 2012 premium payment.

CONCLUSIONS OF LAW

1. The Department incorrectly enrolled the petitioner's husband in BCP for September 2012, because it has not documented that the petitioner requested that he be added to the household's BCP coverage for September 2012.

THEREFORE, it is

ORDERED

That the petition be *remanded* to the county agency with instructions to disenroll the petitioner's spouse from BCP for the month of September 2012, and credit her BCP account as needed. This action shall be taken 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 23rd day of January, 2013

\sNancy J. Gagnon
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 January 23, 2013.

Winnebago County Department of Human Services
Division of Health Care Access and Accountability