



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

BCS/145074

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 07, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on December 07, 2012, at Madison, Wisconsin.

The issue for determination is whether the Department erred in its termination of petitioner from BC+ due to available coverage from her employer.

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: Jose Daniel

Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. On October 30, 2012, the Department sent petitioner notice informing her that it would terminate BC+ effective December 1, 2012 because "you are able to get health insurance from an employer,

and the premium for the employee's coverage will not cost more than 9.5% of your family's income."

3. Petitioner filed a timely appeal.

### **DISCUSSION**

BadgerCare Plus allows children under 19 and their parents to receive medical assistance if their income falls within the limits found in the *BadgerCare Plus Eligibility Handbook*, § 16.1.; Wis. Stat. § 49.471. Beginning on July 1, 2012, those with access to health insurance in which their employer pays at least 80% of the premium are ineligible for BadgerCare Plus if their household income exceeds 133% of the federal poverty. *BadgerCare Plus Handbook*, § 7.1.

A second policy applies to new applicants, those with new employment, those who are completing their next review or renewal, or employed parents or caretakers added to the medical assistance group. This policy holds that those who meet the following conditions are considered to have current access and thus are ineligible for BadgerCare Plus:

- the individual could enroll in and be covered under the plan in the month for which eligibility is being determined, **and**
- the cost of coverage for the employee-only plan does not exceed 9.5% of the monthly household income.

*BadgerCare Plus Handbook*, §§ 7.1 and 7.3.3.

The Handbook clearly states that the 9.5% test is only to be used in cases of a new application, when there is a report of new employment, at the time of the next review/renewal, or when a parent or caretaker is added to the group. The Department representative admitted none of those conditions were the case here. The Handbook then calls for application of the 80% rule until one of those circumstances occurs.

Should the Department wish, it may apply the 80% test to determine continuing eligibility ensuring that any subsequent action includes new notice and appeal rights.

### **CONCLUSIONS OF LAW**

The Department erred in its application of the 9.5% rule when none of the enumerated conditions had been met.

**THEREFORE, it is**

**ORDERED**

The matter is remanded to the Department and its county agent to reverse the December 1, 2012 termination and grant retroactive benefits to December 1, 2012. These actions must be completed within 10 days.

### **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 18th day of January, 2013

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\sJohn P. Tedesco  
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 18, 2013.

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