FH
[redacted]

# STATE OF WISCONSIN
## Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

BCC/145129

**PRELIMINARY RECITALS**

Pursuant to a petition filed November 12, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Manitowoc County Department of Human Services in regard to Medical Assistance, a hearing was held on February 28, 2013, at Manitowoc, Wisconsin. A hearing set for December 18, 2012, was rescheduled at the petitioner's request. At the request of the county agency, the record was held open for 10 days for the submission of additional documents. 15 post-decision delay days are added at the petitioner's request and for her benefit, so she can make the past due premium payment.

The issues for determination are: **(1) Whether the Department correctly discontinued the petitioner's BadgerCare Plus Core Plan eligibility effective October 1, 2012, because the petitioner failed to pay her September, 2012, premium; (2) whether the Department correctly reinstated the petitioner's BadgerCare Plus Core Plan eligibility on October 15, 2012, and then subsequently discontinued her BadgerCare Plus Core Plan eligibility as of November 1, 2012, due to newly reported income in excess of program limits.**

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 McNamara, Income Maintenance Worker
Manitowoc County Department of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:
Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Manitowoc County. She was receiving BC+ Core Plan benefits from April – August, 2012.
2. In August, 2012, the petitioner reported wages at [redacted] that reflected a wage increase.
3. On August 29, 2012, the county agency issued a Notice of Decision to the petitioner informing her that because of her increased earnings, she must begin paying a $165 monthly premium, effective as of September, 2012.
4. No evidence in this record shows that the petitioner was ever sent an invoice or demand to pay the $165 premium in September.
5. Thereafter, the county agency issued a Notice on September 18, 2012, informing the petitioner that because she had not paid her September premium, her BadgerCare Plus Core Plan eligibility would be terminated effective October 1, 2012; and that she would be subjected to a 12 month restrictive re-enrollment period.
6. The agency terminated the petitioner's BC+ Core Plan eligibility on October 1, 2012, and imposed the 12 months restrictive re-enrollment period.
7. On or about October 10, 2012, the petitioner reported lower income from [redacted] and verified these lower earnings.
8. The county agency reviewed the earned income statements, and determined that the petitioner's gross countable income was less than 133% of the Federal Poverty Limit meaning that she met an exception to the restrictive re-enrollment period and the agency reinstated her eligibility for BC+ Core Plan effective October 15, 2012.
9. Subsequently, the agency received even newer earned income information from the petitioner and her employer, and determined that she actually had countable income exceeding 171% of the Federal Poverty Level, and because this exceeded the exception income limit of 133% of the Federal Poverty Level, that she must again be discontinued from the BadgerCare Plus Core Plan, effective November 1, 2012.
10. The petitioner filed an appeal with the Division of Hearings & Appeals on November 12, 2012, contesting the discontinuance of her BC+ Core Plan from October 1- 14, 2012; the imposition of the restrictive re-enrollment period; and the second discontinuance of her BC+ Core Plan benefits effective November 1, 2012.

## DISCUSSION

**(1) Whether the Department correctly discontinued the petitioner's BadgerCare Plus Core Plan eligibility effective October 1, 2012, because the petitioner failed to pay her September, 2012, premium.**

The petitioner was receiving BadgerCare Plus Core Plan benefits in the period of April – August, 2012, without premium. After she reported wages in August, 2012, the agency acted on August 29, 2012, to inform her that her new, higher, wages caused her to have to pay a premium, effective September 1, 2012, of $165 per month. The petitioner was not sent a premium payment invoice or stub. She alleged this as fact, and the agency was unable to produce any record showing that such a demand invoice was sent to her.

The *BadgerCare Plus Handbook* provides as follows concerning premiums and the Core Plan:

**43.7.3.9.2 Increased Premium Amount**

A 10-day notice must be given to the member when the group is required to pay a premium for the first time or is required to pay a higher premium. The increase is effective the following month if Core Plan eligibility is confirmed before adverse action. If the change is confirmed after adverse action, the increase is not effective until the month after the following month.

**Example 9:** [redacted] has Core Plan with a premium. She reports a change in income to her worker on August 23rd that results in a higher premium amount. [redacted]'s premium amount will increase effective October 1st. She will receive the coupon for the new premium amount at the end of September.

Thus, the existence of a billing invoice, or not, is a proverbial "red -herring". The agency should not have implemented the premium increase until October, 2012, at the earliest, with the Notice of August 29, 2012; but it demanded that a September premium be paid by September 17, 2012, i.e., the September"cutoff" for October benefits. **That Notice was after cutoff (August 17) for a September premium requirement.** The agency demanded a September premium and then when the September premium was not paid, the negative action terminating coverage was implemented October 1 st, when the first premium should have been due for *October*, and then if not paid, termination as of *November 1st*. In addition, I note also that non- payment of premiums can be waived for "good cause". See, *BadgerCare Plus Handbook*, at § 43.7.3.7.3.

**(2) Whether the Department correctly reinstated the petitioner's BadgerCare Plus Core Plan eligibility on October 15, 2012, and then subsequently discontinued her BadgerCare Plus Core Plan eligibility as of November 1, 2012, due to newly reported income in excess of program limits.**

The agency took new income evidence from the petitioner after the October 1, 2012, termination of BC+ Core Plan, and learned that she had less income than reported in August. When it recomputed, the agency found that her income was less than 133% of the Federal Poverty Level ("FPL") and that such a former recipient of BC+ Core Plan could be reinstated regardless of the 12 month restrictive re-enrollment period, but only on the 15th of the month. *BadgerCare Plus Handbook*, at § 43.11.5. Thus, it reinstated the petitioner as of October 15, 2012. However, subsequently, a third report of the petitioner's income showed that her income went up to 171% of the Federal Poverty Level, and that when a person is serving and underlying Restrictive Re-enrollment Period *and* her income goes above 133% of the FPL, then BadgerCare Plus Core Plan is to again be discontinued in the next month and the individual required to serve out the restriction period. See, *BadgerCare Plus Handbook*, at § 43.11.5; § 43.7.3.10.

The overall income limit for a BadgerCare Plus Core Plan recipient at application and prior to any failure to pay a premium, however, is 200% of the FPL. See, *BadgerCare Plus Handbook*, at §43.7.2.

As a result of my determination under issue 1, above, that the agency imposed the premium, the discontinuance and the RRE *one month earlier that it should have* under policy, and the subsequent income changes arising in the petitioner's case due to her fluctuating [redacted] employment earnings, I conclude that she had good cause for not paying her premium due for October, 2012, and the matter must be remanded for removal of the September premium requirement, recision of the discontinuance and restrictive re-enrollment effective in October, payment of the $165 premium due for October, 2012, and if that premium is paid with 15 days, reinstatement of her November, 2012, eligibility; and review and redetermination of her eligibility retroactive to December 1, 2012. In the alternative form, her appeal will be dismissed entirely if she does not. In addition, the petitioner ***must pay all past due premiums*** in order to have a full restoration of any BC+ Core Plan benefits to which she may have been entitled after October, 2012. There is no exception under law for that requirement. She is granted 15 days from the

date of this decision to pay the October premium, and 30 more days to pay all other past due premiums for the premium months of November, 2012 – February, 2013, if any are determined due by the agency.

## CONCLUSIONS OF LAW

1) The agency erred in the petitioner's case by imposing the $165 BC+ Cor e Plan premium on the petitioner effective September, 2012, when it should have started in October, 2012.

2) That the petitioner had good cause for failing to pay a premium in September, 2012, when demanded by the agency.

3) That the agency incorrectly discont inued the petitioner's BC+ Core Plan effective October 1, 2012, due to non-payment of a September, 2012, premium, because no September premium was due under departmental policy; and the restrictive re-enrollment period was also incorrectly imposed effective October 1, 2012, due to this defect.

4) That the agency subsequently erred in restoring the petitioner's BC+ Core Plan effective October 1 5, 2012, and discontinuing her BC+ Core Plan eligibility again effective November 1, 2012, because the 133% FPL income limit did not actually apply to the petitioner correctly.

5) That the matter must be remanded to the agency for review and re- determination of the petitioner's eligibility including restoration of her October, 2012, eligibility, finding her not to have owed a premium in September, 2012; allowing her to pay her premium for October, 2012; and reviewing and re-determining whether she has been eligible for BC+ Core Plan in any month since November 1, 2012, with all corrective actions required in the **ORDER** below, including premium computations and payments by the petitioner, if any apply.

**THEREFORE, it is** **ORDERED**

That the matter is remanded to the county agency with instructions to: rescind the BC+ Core Plan premium imposed against the petitioner for September, 2012; grant her good cause for her failure to pay a September, 2012, premium of $165, and restore her October, 2012, BC+ Core Plan certification; provide her with 15 days to pay that premium amount for October, 2012; and if she pays the October, 2012, premium, then lift the restrictive re-enrollment, restore November, 2012, eligibility and review and re-determine her other eligibility retroactive to December 1, 2012, collecting all premiums thereafter past due (November, 2012 – February, 2013 premium months) within 30 days of the re-determination, and restore all benefits to which she is entitled, if any, for each premium paid in chronological order, first month to last, beginning with December, 2012, with written notice. These actions shall be completed within 22 days of the date of this Decision as to October & November, 2012, benefit months, and within 52 days with respect to all subsequent months. **IT IS FURTHER ORDERED,** that if the petitioner fails to pay her October, 2012, premium within 15 days, *then, in the alternative form* , her appeal is dismissed in its entirety.

## 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 5th day of March, 2013

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\sKenneth D. Duren, Assistant Administrator
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 March 5, 2013.

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