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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

BCS/145282

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 16, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on December 11, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly terminated the Petitioner's BadgerCare Plus benefits effective December 1, 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: Katherine May  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On October 16, 2012, the agency received an Employer Health Insurance Verification from the Petitioner's employer indicating that Petitioner was to start working at Children's Hospital of Wisconsin on October 29, 2012 and that she would be eligible to receive health insurance benefits

beginning December 1, 2012. The verification stated that the Petitioner's monthly share of the health insurance premium would be \$45.33.

3. On November 5, 2012, the Petitioner submitted an online ACCESS renewal application for BC+ benefits.
4. On November 9, 2012, the Petitioner was informed during a phone interview with the agency that she was no longer eligible for BC+.
5. On November 12, 2012 and November 19, 2012, the agency issued Notices of Decision to the Petitioner informing her that she is not eligible for BC+ benefits effective December 1, 2012 because she has access to health insurance from her employer.
6. Petitioner's earned income for the month of December was \$1,360. Her unearned income was \$787.50. Total gross income was \$2,147.50 which is 134.99% above the FPL.

### DISCUSSION

Non-exempt parents and caretakers over age 18 with household incomes over 133% of the FPL who had access to health insurance in the twelve months prior to the application or review date are not eligible for BC+ benefits if the access was through the current employer and the following conditions are met:

- The individual could have enrolled in the employer's plan under the current coverage period at any time in the past 12 months prior to the application or review date;
- The cost of coverage for an employee-only plan does not exceed 9.5% of the monthly household income; and
- There is no good cause reason for not signing up for the coverage.

BadgerCare Plus (BC+) Handbook, § 7.2.1.2.

The Petitioner testified that she spoke with an agency worker in October, 2012 after the information about her employment had been submitted. She testified that she was told by the worker that she would remain eligible for BC+ for November and December. She further testified that she received eligibility statements dated October 19 and October 24 indicating that she was eligible for BC+ as long as she continued paying her premiums. She testified that she relied on this information and did not enroll in her employer's health insurance plan due to its high deductible. She is not eligible to enroll in the plan until the next enrollment period in the fall of 2013. There is no indication of a discussion of this issue in the agency's case comments in the Petitioner's case.

The policies governing this issue are clear. The Petitioner's monthly income is 134.99% of FPL. If she was eligible to enroll in her employer's health insurance plan with a premium of less than 9.5% of her monthly income, she is not eligible for BC+ benefits. The Petitioner asks for relief based on an equitable argument that she relied on the statements of agency workers that she would remain eligible for BC+ benefits even though she could enroll in her employer's plan. An administrative law judge cannot make rulings based on equity.

Because the Petitioner had an opportunity to enroll in her employer's plan and the cost of coverage would not have exceeded 9.5% of her monthly income, the agency properly terminated the Petitioner's BC+ benefits effective December 1, 2012.

**CONCLUSIONS OF LAW**

The agency properly terminated the Petitioner's BC+ benefits effective December 1, 2012.

**THEREFORE, it is ORDERED**

That the petition be, and hereby is, dismissed.

**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 Milwaukee,  
Wisconsin, this 31st day of January, 2013

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\sDebra Bursinger  
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 31, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability