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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

BCS/145550

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 28, 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 26, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in its termination of BadgerCare Plus eligibility for petitioner's children 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: Mary Hartung  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is employed. Income for the household exceeds 150% of the federal poverty level for a household of 5 (\$27,010 per year in 2012). She has health insurance available through her employer. The employer pays more than 85% of the premium.

3. Petitioner's employer only allows enrollment during a limited period during the summer. Petitioner did not enroll because she already had BadgerCare benefits.
4. On November 12, 2012, the Department sent notice that it would be terminating BC+ benefits effective December 1, 2012 based on petitioner's past availability of health insurance through her employer.
5. 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. The person is ineligible if he or she has health insurance or has access to employer-sponsored insurance. §DHS 103.03(1)(f)2 and 3. The Department's *BadgerCare + Eligibility Handbook*, § 7.2, describes how past access to health insurance affects BC+ eligibility:

Individuals who had access to health insurance, including access due to a qualifying event, 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 of an adult family member who is currently living in the household and,

1. The access was to a HIPAA health insurance plan through a current employer for which the employer paid at least 80% of the premium, or through the State of Wisconsin's health care plan (regardless of plan type, or premium amount contributed by the employer); and
2. The applicant is a caretaker relative or child under age 19 with family income that exceeds 150 percent of the FPL and the caretaker relative or child is not exempt; and
3. There is no good cause reason for not signing up for the coverage.

The employed BC+ applicant/member and anyone else in the household that could have been covered by the health insurance are ineligible for BC+ for twelve calendar months from the date the health insurance would have begun.

Petitioner states that she did not sign up for insurance through her employer because she does not have money to pay the out of pocket costs that would be needed. She states that she never inquired what percentage of the premium her employer would pay. I understand that petitioner states that she can only enroll in her employer plan in the summer during an open enrollment period. But, petitioner testified that she did not sign up for her employer plan because she had BadgerCare already. The problem is that she was getting BadgerCare benefits contrary to the rules of the program. It is not the fault of the Department that she elected to continue getting BadgerCare benefits even though she was not actually eligible. Based upon the hearing record, I conclude that the county correctly closed BadgerCare Plus because of past access to employer sponsored health insurance. However, if petitioner can verify that her employer pays less than 80% of premiums or that there is a change of income, she should contact the county agency to re-apply.

### CONCLUSIONS OF LAW

The Department did not err in its termination of BadgerCare benefits.

**THEREFORE, it is**

**ORDERED**

That this appeal 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 Madison,  
Wisconsin, this 7th day of February, 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 February 7, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability