



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/146373

PRELIMINARY RECITALS

Pursuant to a petition filed January 04, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Green Lake County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on January 30, 2013, at Green Lake, Wisconsin.

The issue for determination is

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Adam Spittler, ES Worker
Green Lake County Department of Human Services
Human Services Ctr.
571 County Road A
Green Lake, WI 54941

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Green Lake County.
2. On June 26, 2012, the petitioner applied for BCP and FoodShare. BCP is a Wisconsin variant of MA for families with children or pregnant women; it has higher income limits than "traditional" MA. On July 13, 2012, the Department issued written notice to the petitioner advising that BCP

had been granted, with an effective beginning date of June 1, 2012. The notice further advised that no BCP premium was due for June or July. However, beginning August 1, 2012, a \$168 monthly premium payment was required for continued eligibility. The notice also advised that if monthly premiums are not paid, adults cannot re-enroll in BCP for 12 months (6 months for children). See *Notice*, Exhibit 1-C, p.2.

3. Another notice issued on August 6, 2012, advised of the restrictive re-enrollment penalties for premium non-payment.
4. On August 20, 2012, the Department issued written notice to the petitioner advising that her BCP premium had not been paid. It further advised that if the premium was not paid by the end of the next month, the petitioner would not be able to enroll in BCP for 12 months. Exhibit 1-E, p.2. The petitioner did not pay the August premium in August or September 2012. The BCP coverage ended September 1, 2012.
5. Effective July 1, 2012, a BCP household with income above 133% FPL was required to pay a premium. The household's income was at 74% of the federal poverty level (FPL) in June 2012, at 98.7% in July, and 178.7% in August 2012. The petitioner got a job at the beginning of August, but the job ended on November 9, 2012. The petitioner's husband received Social Security Disability of \$1,303 throughout the months in question.
6. On November 27, 2012, the petitioner called the agency and reported that she was no longer receiving Unemployment Compensation (UC). Without either UC or petitioner's job income, the household's income dropped to 104% of the FPL. Because the household was now under the premium threshold of 133%, the petitioner immediately became BCP eligible effective November 1, 2012.
7. On November 29, 2012, the petitioner called the agency and reported that her UC had resumed. The UC income was then added to the case, with the result that the household's income was at 180% FPL. This re-triggered application of the restrictive re-enrollment period. The restrictive re-enrollment went into effect for January 1, 2012 (as opposed to December 1, 2012, due to need to give 10-day notice of change).
8. The Wisconsin Statutes declare that there is a 45-day appeal period from the effective date of an MA/BCP action within which to appeal. Wis. Stat. §49.45(5). The petitioner's January 4, 2013, appeal is untimely for challenging lack of BCP coverage for any month prior to December 2012.

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 petitioner does not contest that his income puts the household above the 133% of federal poverty line. For the household's adults, BCP financial eligibility exists, in general as follows:

- (1) if household gross income is at or below 133% FPL, the parent is eligible without a premium,
- (2) if household gross income is above 133% FPL but not over 200% FPL, the parent is eligible with a premium, or
- (3) if household gross income is above 200% FPL, the parent is not BCP eligible.

BCPEH, §19.1 (7/1/12).

When a household with income above 133% FPL does not timely make a premium payment, the adults are barred from re-enrolling for 12 months. The initial payment was due by August 1, and if it had been made, the subsequent months' payments would have been due by the 10th of each benefit month. *BCPEH*, § 19.6. The policy on the restrictive re-enrollment is as follows:

A member for whom a premium is owed for the current month who leaves BC+ by quitting or not paying a premium may be subject to a restrictive re-enrollment period. A *restrictive re-enrollment period (RRP)* means the member cannot re-enroll in BC+ for a certain number of months from the termination date while their income remains high enough to owe a premium, unless they meet a good cause exemption. For adult BadgerCare Plus members aged 19 and older, the RRP is 12 months; for children under age 19, the RRP lasts 6 months.

...

19.11.4 Good Cause for Quitting BC+

Do not apply the RRP when an individual who owes a premium for quitting BC+ in the current month voluntarily quits BC+ for these reasons:

1. No person is non-financially eligible for BC+.
2. The individual moved out of Wisconsin.
3. Health insurance became available for the individual.
4. The individual is now eligible without a premium.
5. The individual has an increase in income that makes them BC+ ineligible.

BCPEH, §§19.11, 19.11.4. The petitioner's situation fits none of these good cause reasons. Therefore, imposition of the RRE for her case was correct.

The petitioner stated that she did not pay the August premium because she believed, with the advent of her new job, that the household would not be financially eligible for the BCP benefit. However, the last pertinent eligibility notices she received for August and September advised that she was still BCP-eligible, assuming that premium payments were made. Thus, her belief was unreasonable. The petitioner also argued that she was misled about the restrictive re-enrollment period by the Department's notices because they declare that "if you do not pay your monthly premium, your BadgerCare Plus benefits will end; you *may* not be able to enroll in BadgerCare Plus for - 12 months for adults...". [emphasis added] The petitioner argues that the notices should have stated that "you *cannot* enroll in BadgerCare Plus for 12 months," with "cannot" replacing "may not." I assume that the Department did not say "cannot" because it is not accurate. A household whose income falls under 133% FPL is able to avoid the restrictive re-enrollment while its income is lower. That exact circumstance happened to the petitioner for November 2012, when she did receive BCP coverage. The notice language is adequate to alert the petitioner to the strong possibility that she would be barred from future coverage. If she had questions, she should have contacted her worker sooner.

Finally, the petitioner inquired as to the deadline for making up back premium payments, to escape the re-enrollment penalty. The *BCPEH* language, which is included here for informational purposes, is as follows:

19.9 LATE PAYMENTS

Late payments impact eligibility differently, depending on when the late payment is received. Members must pay the overdue payment(s) that resulted in case closure...

If the member pays the owed premium any time in the month after the benefit month, eligibility can be restored. If s/he owes a premium for the following month, s/he must pay that premium before CARES will restore eligibility for BC+. The member must pay the IM agency directly (not *Fiscal Agent*). ...

If the member pays in the second month after the benefit month, it's considered a non-payment.

19.11.3 Quitting BC+

In order for BC+ to be cost-effective, premium-paying members will not be able to pick and choose when they want to pay premiums and receive BC+ benefits. Therefore, if a premium-paying BC+ member decides to quit the program, they will remain ineligible for:

- 6 months if they are a child under age 19,
- 12 months if they are an adult age 19 or older, **or**
- until their income drops below the premium threshold,

whichever happens first.

BCPEH, §§19.9, 19.11.3. The first premium benefit month in this case was August, which means the August payment had to be made by September 30, 2012.

CONCLUSIONS OF LAW

1. Imposition of a one year restrictive re-enrollment on the petitioner for her BCP case was correct.

THEREFORE, it is

ORDERED

That the petition 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 28th day of March, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 28, 2013.

Green Lake County Department of Human Services
Division of Health Care Access and Accountability