



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

BCS/146422

PRELIMINARY RECITALS

Pursuant to a petition filed January 7, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Rock County Department of Social Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on February 7, 2013, at Janesville, Wisconsin.

The issue for determination is whether the county agency correctly discontinued the petitioner's BCP effective December 31, 2012, due to her "access to other health insurance."

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: Michelle Walworth, ES Spec.
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Prior to January 2013, the petitioner's household of four persons was certified for BCP. On November 27, 2012, the petitioner reported new employment at [REDACTED] ([REDACTED]) to [REDACTED]

the agency. The agency issued a verification request regarding wages and health insurance access on November 8, 2012.

3. The petitioner's prior employer, [REDACTED] offered health insurance, but did not offer to pay at least 80% of the premium cost. Thus, the petitioner did not have "access" to health insurance at [REDACTED].
4. The petitioner's household income places her at 159% of the federal poverty level for her household size. On December 10, 2012, the agency received health insurance access verification from [REDACTED]. That verification declared that [REDACTED] offers health insurance to its employees and their family members. It further declares that the employer pays 87% of the premium for all family members.
5. On December 11, 2012, the Department issued written notice to the petitioner advising that her BCP for all family members would be discontinued effective December 31, 2012. The basis for discontinuance was that the household members were able to get insurance ("access") to health insurance from the petitioner's employer. The petitioner later appealed from that notice.
6. The petitioner did not sign up for the [REDACTED] health insurance. She asserted at hearing that her employer's open enrollment period ended on December 14, 2012.

DISCUSSION

BadgerCare Plus is an expansion of the Wisconsin Medical Assistance program meant to provide insurance for children under 19 and their parents. *BadgerCare Plus Eligibility Handbook (BCPEH)*, 1.1. There are two major BCP benefit plans. To be financially eligible for the BCP Standard Plan (full MA benefits), a family cannot have income greater than 200% of the federal poverty line (FPL). Wis. Stats. §49.471(8). The BCP Benchmark Plan (limited services) is available to children in households with income above 200% of the poverty line, and to self-employed parents/caretakers. The petitioner's household income does not exceed 200% FPL.

Additionally, there is a hybrid nonfinancial/financial BCP eligibility test related to access to other insurance. If a household's income exceeds 133% FPL, the household cannot be eligible for BCP if it has access to employer-based health insurance. *Id.*, §7.1. In 2012, 133% of the poverty line for 4 persons was \$2,554.70. See *BCPEH* at §50.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>

Wis. Stat. §49.471(8) states that a family is ineligible if it has, or has *access* to, employer-subsidized health care coverage. The *BCPEH*, 7.3, states that a family with income exceeding 133% of the FPL is ineligible if it is covered by and has "access" to any health insurance plan that meets the standard of the Health Insurance Portability and Accountability Act (HIPAA). A HIPAA plan is any group plan that provides medical care to individuals and/or their dependents. Wis. Stat. §49.471(1)(g).

So, what is "access?" The statute declares that a family has "access" to other health insurance if the employer is paying at least 80 percent of the premium:

(8) HEALTH INSURANCE COVERAGE AND ELIGIBILITY

(b) Except as provided in pars. (c) and (d), an individual ... is not eligible for BadgerCare Plus if any of the following applies:

1. The individual has individual or family health insurance coverage that is any of the following:

a. Coverage provided by an employer and for which the employer pays at least 80 percent of the premium.

2. *The individual, in the 12 months before applying, had access to the health insurance coverage specified in subd. 1. ...*

(d)1. None of the following is ineligible for BadgerCare Plus by reason of having health insurance coverage or access to health insurance coverage:

a. A pregnant woman.

b. [a child under age one] ...

2. An individual under par. (b)2., or an individual who is an unborn child or an unborn child’s mother under par. (c)2., is not ineligible if any of the following good cause reasons is the reason that the individual did not obtain the health insurance coverage under par. (b)1. to which they had access:

a. The individual’s employment ended.

b. The individual’s employer discontinued health insurance coverage for all employees.

c. [A family member was] eligible for other health insurance coverage ... at the time the employee failed to enroll in the health insurance coverage under par. (b)1. and no member of the family was eligible for coverage under this section at that time.

d. The individual’s access to health insurance coverage has ended due to the death or change in marital status of the subscriber.

e. Any other reason that the department determines is a good cause reason.

(emphasis added)

Wis. Stat. §49.471(8). The parallel state code provision and policy handbook section echo the statute on this issue. Wis. Admin. Code §DHS 103.03(1)(f)3; *BCPEH*, §7.3.

None of the facts in the Findings above are in dispute. The employer is paying at least 80% of the premium cost, so the 80% test disqualifies the petitioner from receiving BCP. The fact that the petitioner has now missed her open enrollment is not a legal reason to continue her BCP, because the statute above defines access in the current *and* past tense – she had the ability to sign up within the last 12 months.

CONCLUSIONS OF LAW

- 1. The county agency correctly discontinued the petitioner’s household’s Standard Plan BCP effective December 31, 2012, due to having “access” to other health insurance.

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 8th day of February, 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 February 8, 2013.

Rock County Department of Social Services
Division of Health Care Access and Accountability