



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/146669

PRELIMINARY RECITALS

Pursuant to a petition filed January 17, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance (MA), a hearing was held on March 12, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the Department correctly discontinued the petitioner's BadgerCare Plus (BCP) coverage.

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: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
[REDACTED]

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On September 28, 2012 the agency issued written notice to petitioner stating that effective October 1, 2012 she would be required to pay a monthly premium of \$142 in order for the adults in her household to receive BCP. Exhibit 5.

3. Petitioner paid her October premium on October 18, 2012. See Exhibit 3.
4. On November 19, 2012 the agency issued written notice to the petitioner, advising that the premium had not been paid that month and that their BCP would end December 1, 2012 if the premium was not paid by the end of December. It further advised that she may not be able to enroll in BCP for the next 12 months if it was not paid by the end of December. See Exhibit 1.
5. On December 3, 2012, the agency issued written notice to the petitioner advising that the adults are not covered by BCP as of January 1, 2013, due to imposition of a 12-month restrictive re-enrollment period for failing to pay premiums. See Exhibit 6.

DISCUSSION

BadgerCare Plus (BCP) 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>.

Unless exempt, the following individuals must pay a premium to become or remain eligible for BC+:

1. Children in families with income over 200% of the Federal Poverty Level (FPL),
2. Parents, stepparents and caretaker relatives with income over 133% through 200% of the FPL,
3. Parents, stepparents and caretaker relatives with income over 133% in a BC+ Extension, and
4. Self-employed parents, stepparents and caretaker relatives with income above 200% of the FPL before subtracting the depreciation but below 200% of the FPL after subtracting the depreciation

BCPEH, §19.1.

When a household that has a premium requirement does not timely make a premium payment, the adults are barred from re-enrolling for 12 months. The payment in question here was due for November, and if it had been made, the subsequent months' payments would have likewise been due by the 10th of each benefit month. See *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.

BCPEH, §19.11. A good cause exemption is defined as “t

Petitioner argued at hearing that she first mailed her November premium in November, but that she had mailed it without a stamp, and therefore it was returned to her. She then argues that she contacted the agency via the WKRP Consortium to discuss the premium issue. She then wrote a check dated “12/30/11”, and mailed that. The agency did not receive the premium until January 14, 2013. There was no corroborating evidence of the November mailing and return, nor any regarding her alleged contact with the agency. Even if I found those previous attempts to be true, the ultimate payment of the premium by the end of December did not occur. There is nothing to show that petitioner’s situation fits a good

cause reason here as there are no . She waited too long to make a payment, and therefore, imposition of the RRE for the adults in this case was correct.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

1. Imposition of a one year restrictive re-enrollment on the adults in the petitioner's 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 Milwaukee,
Wisconsin, this 29th day of March, 2013

\sKelly Cochrane
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 29, 2013.

Kenosha County Human Service Department
Division of Health Care Access and Accountability