



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCB/146879

PRELIMINARY RECITALS

Pursuant to a petition filed January 25, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance, a hearing was held on February 28, 2013, at Appleton, Wisconsin.

The issue for determination is whether the Department erred in its denial of BC+ benefits to petitioner's son due to the availability of insurance for which employer pays 80% of premium.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Represented by:

Craig A. Kubiak
Kubiak Law Office, LLC
5605 Waterford Lane
Appleton, WI 54913-2900

Respondent:

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

By: Barb Hardy

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.

2. Petitioner is the mother of a minor child. Her husband is a plastic surgeon and is sole shareholder and president of his practice, a Subchapter S Corporation.
3. The corporation pays at least 80 percent of the health insurance premiums for petitioner's family coverage.
4. Petitioner applied for BC+ for one child. The record indicates that this child may be difficult or quite expensive to insure.
5. The Department denied BC+ eligibility to the child on the basis that the family has health insurance available through an employer that pays at least 80 percent of the premium.
6. Petitioner filed a timely request for hearing.

DISCUSSION

According to the BC+ Eligibility Handbook access to employer sponsored insurance is often a bar to BC+ eligibility:

7.3.2 The 80% Current Access Test

Individuals with access to health insurance, including access due to a qualifying event, through an employed family member who is currently living in the household are not eligible for BC+ benefits if:

1. *The access is to a HIPAA health insurance plan through a current employer for which the employer pays at least 80% of the premium or the State of Wisconsin's health care plan (regardless of plan type, or premium amount contributed by state or local government); **and***
2. *The applicant /member is a caretaker relative or child under age 19 and the caretaker relative or child is not exempt; **and***
3. *The coverage would begin within three calendar months following:*
 - a. *The month of BC+ application filing date; **or***
 - b. *Annual review month; **or***
 - c. *Employment start date*

*The employed BC+ member and anyone else who could have been covered by the health insurance plan are ineligible for BC+ benefits. **Children under 19 years of age can become eligible by meeting a deductible. (See Ch. 17)***

The rules do not distinguish between family owned businesses or corporations and traditional employers. The rule simply questions whether the employer pays 80 percent or more. Petitioner has conceded that it does. There is no exception for a "pass-through" scheme.

But, petitioner merely argues for the opportunity for the child to access BC+ with a deductible. The child has this opportunity regardless of the employer plan. The final sentence of the passage quoted above

makes it clear that the application to children is different than others. Chapter 17 clarifies this treatment of children:

17.1 Deductibles

Children (under age 19) with income above 150% of the FPL who have access to insurance and pregnant women with incomes above 300% of the FPL can qualify for BC+ by meeting a deductible. The deductible amount is calculated for a six month period using the amount of income that exceeds either 150% FPL for children or 300% FPL for pregnant women. The deductible is met by incurring medical expenses that equal the deductible amount.

* * *

17.3 Children Under 19

The deductible amount for a child under 19 is the amount of countable income above 150% of the FPL for a 6 month period. To meet the deductible, the child or other family members included in the BC+ group must incur medical bills equal to the deductible amount. Once the deductible is met, the child and all other children under 19 in the BC+ group will be covered under the Standard plan without a premium, for the remainder of the deductible period.

The Department is correct that the child is not now eligible for BC+. It did not commit any error and I affirm the present denial. **But, the petitioner may ask the agency to calculate a deductible amount and period for the child.** This deductible amount is likely to be quite substantial given the income information in the record. **But, if the medical expenses exceed the deductible threshold during the deductible period (as described in BC+ Handbook Chapter 17), and assuming all other eligibility requirements are met, the child will then qualify for BC+coverage at that time.**

I also note that petitioner has repeatedly referenced, ambiguously, the child's possible uninsurability. If the child is indeed uninsurable under the employer plan, then he would not have access to insurance and the 80% analysis, in itself, would not bar BC+ coverage.

CONCLUSIONS OF LAW

The Department did not err in determining that petitioner's child is not currently eligible for BC+ due to access to employer health insurance.

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 11th day of April, 2013

\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 April 11, 2013.

Outagamie County Department of Human Services
Division of Health Care Access and Accountability
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