



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/146999

PRELIMINARY RECITALS

Pursuant to a petition filed January 31, 2013, 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 March 21, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly discontinued the petitioner's BadgerCare Plus (BCP) coverage effective February 1, 2013 by the imposition of a one year restrictive re-enrollment.

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: Alma Lezama
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County and is enrolled in the BCP MA program.
2. On September 18, 2012 the agency (Milwaukee Enrollment Services (MES)) issued a BCP premium notice to petitioner to pay \$77 for October 2012. Petitioner did not pay that premium.

3. On December 5, 2012 the agency issued a notice to petitioner to pay \$79 for January 2013. Petitioner did not pay that premium.
4. On January 18, 2013 the agency issued a notice to petitioner stating that petitioner and her husband were not enrolled in BCP effective February 1, 2013 because their BCP “premium has not been paid. If you want to stay enrolled in BadgerCare Plus, you should pay this premium right away. If the premium is not paid by the end of the next month, you may not be able to enroll in BadgerCare Plus for the next 12 months.”
5. On January 31, 2013 petitioner came to the agency to pay two months of premiums. She was told that she could not pay the premiums because she was in a restrictive reenrollment. She filed an appeal that same day, which is the subject of this decision. On February 5, 2013 the Division of Hearings and Appeals ordered MES to restore petitioner’s benefits until a hearing decision was issued.

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 October and January, and if those payments 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 “the circumstances beyond a person’s control which keep the person from following program requirements or specific eligibility conditions, such as premium payment or cooperation with medical support.” *Id.*

Petitioner argued at hearing that she came to the agency to pay the premiums in question on January 31, 2013 after she received the January 18, 2013 notice that told her if she wanted to stay enrolled in BCP, she should pay this premium right away. That notice also stated that if the premium is not paid by the end of the next month, which would have been the end of February, she may not be able to enroll in BCP Plus for the next 12 months. The notice said that she would not be enrolled as of February 1, 2013. She was told at the agency that she could not pay the premiums because she was in a restrictive reenrollment. She then filed an appeal that same day, which is the subject of this decision. The appeal form corroborates petitioner's version of events. On February 5, 2013 the Division of Hearings and Appeals ordered MES to restore petitioner's benefits until a hearing decision was issued (known in the parlance as a "shall not").

There was no dispute that a premium was due, or that she didn't pay the two months in question. However, petitioner did act in accordance with the notice of January 18 by coming to the agency to pay them. She was told on January 31 that she could not pay them due to the restrictive reenrollment, which was in error, as it shouldn't have gone into effect until February 1. Thus, I will allow petitioner the opportunity to pay those two months within 10 days of the date of this Decision. If she fails to pay those months, then the restrictive reenrollment will stand. The agency's testimony at hearing was that petitioner would also be required to pay February's premium in order for the restrictive reenrollment to be lifted; however the testimony was that no premium notice was ever mailed to petitioner and we have no evidence of what the premium owed for that month would be. Further, she would have gone into restrictive reenrollment as of February 1, so paying a premium for that month would have been nonsensical. At *this* point in time however she will also likely have to pay for February, March and April, and May's premium will also be due soon. However, petitioner deserves notice of what those premiums are, and therefore I am also ordering the agency to provide notice to petitioner of her premiums for those months. If she again fails to pay those premiums, she may face restrictive reenrollment yet again.

CONCLUSIONS OF LAW

1. The agency incorrectly discontinued the petitioner's BadgerCare Plus (BCP) coverage effective February 1, 2013 by the imposition of a one year restrictive re-enrollment.
2. Petitioner must pay her BCP premiums for October 2012 and January 2013 to avoid restrictive re-enrollment.

THEREFORE, it is

ORDERED

That petitioner shall pay her premiums for October 2012 (\$77) and January 2013 (\$79) within 10 days of the date of this decision. If petitioner fails to pay those premiums, the restrictive reenrollment effective February 1, 2013 is upheld. If petitioner pays the premiums within 10 days of the date of this decision (or by April 19, 2013), the agency shall then issue notice to petitioner to pay any premiums currently due for February and ongoing within 7 days of the payment, or no later than April 26, 2013. Those premiums for the later months would need to be paid by May 10, 2013 in order to avoid another restrictive reenrollment. In all other respects, the petition for review herein 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 9th day of April, 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 April 9, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability