



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCB/147238

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 09, 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 13, 2013, at Milwaukee, Wisconsin.

The issue for determination are (1) whether the petitioner timely filed her appeal regarding her placement in restrictive reenrollment; and (2) whether the county agency correctly denied petitioner's request for BadgerCare plus benefits due to her restrictive reenrollment status.

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:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. The county agency notified the petitioner on June 11, 2012, that she must pay a \$96.00 monthly BadgerCare Plus premium beginning on July 1, 2012.
3. The agency notified petitioner on July 18, 2012, that her premium had not been paid, and that she would no longer be enrolled in BadgerCare Plus as of August 1, 2012. It additionally stated that if the premium is not paid by the end of August, 2012, she could lose her eligibility to enroll in BadgerCare for 12 months.
4. The petitioner did not pay her premium by the end of August, 2012.
5. On January 21, 2013, petitioner received a notice from respondent specifying that petitioner is not able to enroll in BadgerCare Plus "...for 6 months, if you are 18 or under, or 12 months if you are 19 or older..." Exhibit 2.
6. The petitioner filed her appeal on February 9, 2013.

### DISCUSSION

#### I. The petitioner failed to timely file her appeal regarding her placement in restrictive reenrollment.

Medical assistance recipients must appeal negative decisions within 45 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Adm. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it. The county agency notified the petitioner on July 18, 2012, that her BadgerCare Plus benefits would end as of August 1, 2012, because she failed to pay her premium. She filed the instant appeal on February 9, 2013, or 192 days later. Because her appeal regarding her placement in restrictive reenrollment is late, I have no jurisdiction to hear that issue and must deny it.

#### II. The county agency correctly denied peittioner's request for BadgerCare Plus benefits while she was placed in restrictive reenrollment.

The record and testimony received at hearing clearly established that the agency was correct in denied peittioner's request for BadgerCare Plus benefits during the pendency of her restrictive reenrollment period. The petitioner had been receiving medical assistance under BadgerCare Plus, which covers children under 19 and their parents. Wis. Stat. § 49.665. The county agency ended her benefits because she failed to pay the premium due on her case by the end of December, 2012. The program's rules require recipients to pay a premium by "the 10th of the month prior to the month for which the premium is required." Wis. Admin. Code § DHS 103.085(1)(d)2. If a person fails to pay the premium by the end of the month for which it is due, benefits end on the last day of that month. Wis. Admin. Code § DHS 103.085(1)(d)3. Those whose benefits end because they did not pay a premium cannot reenroll for 12 months unless they did not pay because of circumstances beyond their control. These circumstances include:

- a. A problem with an electronic funds transfer from a bank account to the BadgerCare program.
- b. A problem with an employer's wage withholding.
- c. An administrative error in processing the premium.
- d. Any other circumstance affecting payment of the premium which the department determines is beyond the group's control, but not including insufficient funds.

Wis. Admin. Code, § DHS 103.085(3)(b)1

The petitioner contends that she was confused by the notices and by the references to a 6-month period and a 12-month period regarding restrictive reenrollment. However, Wisconsin medical assistance regulations specifically prohibit enrollment in BadgerCare Plus during the restrictive reenrollment period.

The agency established that it correctly denied petitioner's enrollment in the BadgerCare program in January, 2013, based upon the petitioner's restrictive reenrollment status.

### **CONCLUSIONS OF LAW**

1. There is no jurisdiction to consider the petitioner's appeal of her placement into restrictive reenrollment because it is untimely.
2. The respondent correctly denied petitioner's January, 2013 application for BadgerCare Plus benefits as she was in restrictive reenrollment at that time.

**THEREFORE, it is**

**ORDERED**

The petitioner's 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 25th day of April, 2013

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\sPeter McCombs  
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 25, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability