



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/147578

PRELIMINARY RECITALS

Pursuant to a petition filed February 25, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regards to the discontinuance of BadgerCare Plus, a telephone hearing was held on March 27, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly discontinued the petitioner's individual BC+ coverage effective January 1, 2013, and imposed a restrictive re-enrollment period, due to premium non-payment.

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: Belinda Bridges, HSPC
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Administrative Law Judge
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She was the casehead of a BadgerCare Plus household composed of herself and two minor children.
2. On November 16, 2012, the county agency issued a Notice to the petitioner informing her that her BC+ would be reduced, effective December 1, 2012, because she would be required to pay an \$82 per month premium for her individual BC+ coverage effective with December, 2012; the

coverage of her children would be unaffected by the change. The petitioner denies receipt of the Notice, but it was mailed to her current residence address.

3. On or about November 19, 2012, the Department issued a BC+ premium payment notice to the petitioner for December, 2012. The petitioner denies receipt of this premium payment notice.
4. On December 19, 2012, the county agency issued a Notice to the petitioner informing her that her individual BC+ would be discontinued, effective January 1, 2013, because she had not paid her December, 2012, BC+ premium; and coverage for her children would be unaffected by the change. In addition, the petitioner would be subjected to a 12 month restrictive re-enrollment period.
5. Effective January 1, 2013, the petitioner's individual BC+ was discontinued.
6. On February 25, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals, contesting the discontinuance of her BC+ effective January, 2013. Benefits were not continued pending the hearing decision.
7. The petitioner had good cause for not paying December, 2012, and January, 2013, premiums of \$82 for each month, because she was unaware of the requirement to do so, as she did not receive any of the notices or the premium payment notice for reasons unknown. She also had good cause for non-payment of any subsequent premiums due, if any, for February – April, 2013, as a consequence.
8. The petitioner may have had a subsequent decrease in child support income, and her eligibility for BC+ must be reviewed and re-determined using more current KIDS child support data retroactive to the three months prior to February, 2013, for February, March & April, 2013, BC+ eligibility; so this part of the agency decision must be remanded for review.

DISCUSSION

The agency asserts that the petitioner's appeal is untimely. An appeal concerning a negative action taken by the Department against Medical Assistance, including BadgerCare Plus, must be filed within 45 days of the effective date of a negative action. Wis. Stat. § 49.45(5). It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the time limit for filing an appeal is tolled when the recipient establishes that the notice of the negative action was not actually received. Here, the petitioner filed her appeal 55 days after the effective date, but she has persuasively testified that she did not receive the Notices of November 16th and December 19th, or the premium payment notice of November 19th, and that she was completely unaware of the agency's negative action until approximately February 24th, 2013, when she met with agency workers to inquire into the status of her public assistance benefits because a pharmacy had refused to provide her with medications at BC+ reimbursement rates, noting that she was not listed as covered.

Under these facts, I find her appeal timely.

Given these facts, I also conclude that she had good cause for the non-payment of her December, 2012, BC+ premium. *BadgerCare Plus Eligibility Handbook*, §19.8.3 Such good cause, however, does not remove the requirement that she pay all past due premiums to have her individual coverage restored. Rather, she must do so. See, *BadgerCare Plus Eligibility Handbook*, §19.8.3. The petitioner alleged that her child support income has subsequently decreased as well, which may affect the premium. The matter will be remanded for rescission of the discontinuance, removal of the restrictive re-enrollment period, and review and re-determination of the petitioner's household's eligibility for BC+ retroactive to February 1, 2013, using available and applicable KIDS child support data for the three months prior to February, 2013.

The petitioner **must pay all past due premiums determined by the agency within 20 days of the date the agency informs her of all premiums past due**, including immediate payment at a minimum, of \$82 for each of the months of December, 2012, and January, 2013, based upon the determinations made in November, 2012. *If she fails to do so, then in the alternative form, her appeal will be dismissed in its entirety. She would be well-advised to do so promptly.*

CONCLUSIONS OF LAW

- 1) That the petition for review is timely.
- 2) That the petitioner had good cause for non-payment of her monthly BC+ premium obligations, i.e., \$82 for each of the payment months of December, 2012, and January, 2013, and for any premiums due for subsequent months in February – April, 2013.
- 3) That the agency must review and re-determine the premiums due for February – April, 2013, if any, and notify the petitioner of the result of the review.

THEREFORE, it is

ORDERED

That the matter is remanded to the county agency with instructions to: accept payment from the petitioner (**due immediately**) of \$82 per month for December, 2012, and January 2013, BC+ premiums as if made when originally due; review and re-determine the petitioner's BC+ eligibility retroactive to February 1, 2013, using KIDS income data applicable under BC+ policy for the three months immediately prior to the review period, with notice, within 10 days of the date of receipt of the two premiums ordered above. **IT IS FURTHER ORDERED**, that the agency shall accept all other past due BC+ premiums retroactive to February, 2013, if the petitioner makes payment of **all remaining past due premiums** within 20 days of the date of re-determination, and certify her as eligible for all BC+ to which she is otherwise entitled, if any, retroactive to February 1, 2013. In the alternative, if the petition fails to pay *any* premiums due for December, 2012, to April, 2013, then the appeal is dismissed in its entirety.

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 2nd day of April, 2013

\sKenneth D. Duren, Assistant Administrator
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 2, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability