



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/147909

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 08, 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 April 22, 2013, at Appleton, Wisconsin.

The issue for determination is whether the Department erred in determining petitioner ineligible for BC+ based on current access to insurance for which an employer would pay 80% or more of the premium.

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: Kha Vang

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 applied for BC+ on 1/25/13.
3. The Department denied BC+ on the basis that petitioner has current access to health insurance for which the petitioner's husband's employer would pay 80% or more of the premium.

4. The Department sent a notice to petitioner on 1/31/13 indicating denial.
5. Petitioner filed a timely appeal.

### **DISCUSSION**

Wis. Stat. §49.471(8) states that a family is ineligible if it has, or has *access* to, employer-subsidized health care coverage. The Wisconsin Administrative Code §DHS 103.03(1)(f)2, and the *BCPEH*, 7.3, state that a family with income exceeding 133% of the FPL is ineligible if it is covered by and has “access” to any health insurance plan that meets the standard of the Health Insurance Portability and Accountability Act (HIPAA). A HIPAA plan is any group plan that provides medical care to individuals and/or their dependents. Wis. Stat. §49.471(1)(g).

The Handbook provides two tests to determine whether a person has “access.” The first is set forth in § 7.3.2 and tests whether an employer pays 80% or more of the premium:

#### **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)*

*There are no good cause reasons for not enrolling in a health insurance plan when an individual has current access.*

The second test conducts a different analysis:

#### **7.3.3. The 9.5 % Current Access Test**

*For parents and caretakers who are not exempt (See 7.1), an individual with current access to employer sponsored health insurance is not eligible for BadgerCare Plus. An individual has current access to employer sponsored insurance if:*

- *the individual could enroll in and be covered under the plan in the month for which eligibility is being determined, **and***
- *the cost of coverage for the employee-only plan does not exceed 9.5% of the monthly household income.*

*When an employed parent or caretaker has been determined to have current access, the individual's spouse will also be considered to have current access if the employer offers a plan that provides coverage to the spouse, such as employee + spouse or employee + family coverage.*

...

*There are no **good cause** reasons for not enrolling in a health insurance plan when an individual has current access.*

In this case, the Department relied on the first of the two tests in order to determine that petitioner was ineligible. This was error. The Handbook explains:

*The 9.5% Current Coverage Test will be applied on or after July 1, 2012, but only to non-exempt adult parents and caretakers and only when:*

- *A new [application](#) or program request is submitted,*
- *New employment is reported,*
- *The next review/renewal is completed, or*
- *A parent or caretaker with employment is added to the assistance group.*

***Until one of the above circumstances occurs, the 80% Current Coverage Test will continue to apply to all non-pregnant, non-disabled parents and caretakers.***

*The 80% Current Coverage Test will continue to apply to non-exempt (See [7.1](#)) children.*

Because this case was a new application after July 1, 2012, the 9.5% rule should have been used. The 80% rule no longer applies to an adult parent's new application after that date. This analysis is clear based on the language in boldface above indicating that the 80% rule continues to apply "until one of the above circumstances occurs." In this case, that circumstance was the new application. This analysis is confirmed by review of the Access Coverage/Overview in Section 7.8 of the Handbook. In that section, the analysis, presented in a series of questions, inquires whether one of the above events has occurred since July 1, 2012. If the answer is "yes" the analysis tracks the 9.5% rule inquiry. Only if the answer is "no" does the inquiry turn to the factors of the 80% rule. This means that ultimately, the 80% rule will have no continuing application as all cases will have been subject to a review/renewal or new application since July 1, 2012. In other words, the 80% rule will soon be superseded by the 9.5% rule.

In this case, the Department should have determined eligibility based on the 9.5% rule, and not the 80% rule. The agency must redetermine eligibility and issue new notice to petitioner. Petitioner will have a new right to appeal if she fails the new test.

**CONCLUSIONS OF LAW**

The Department erred in determining eligibility under the 80% rule. The 9.5% rule is the applicable rule.

**THEREFORE, it is**

**ORDERED**

This matter is remanded to the Department and its county agent with instruction to redetermine eligibility retroactive to the date of application through the use of the 9.5% current access test. This action shall be completed within 10 days.

**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 17th day of May, 2013

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\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 May 17, 2013.

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