



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

AMENDED DECISION

BCS/147909

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. **Following the issuance of the Decision in this matter, the agency forwarded a communication that clarified a fact that was unclear based on testimony at hearing. The agency indicated that the agency used the 9.5% rule in determining eligibility. This was correct and is what the initial Decision in this case directed the agency to do. With the clarification that the 9.5% rule was initially applied, this Amended Decision is appropriate.**

The issue for determination is whether the Department erred in determining petitioner ineligible for BC+ based on current access to insurance.

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. At the time of application the family income was \$2,462.74 per month.
3. The Department denied BC+ on the basis that petitioner has current access to health insurance.
4. Petitioner's husband has access to a PPO plan for \$80.60 per month. For additional cost, he can include petitioner in the plan.
5. The Department sent a notice to petitioner on 1/31/13 indicating denial.
6. 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).

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.*

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.

The agency notice indicates that petitioner failed under the 9.5% test. Documentation from the employer indicates that it has a PPO plan available for the employee only that has an employee cost of \$80.60 per month. This is clearly less than 9.5% of the household income of \$2,462.74 at the time of application. A PPO plan is available that would cover petitioner as spouse of the employee for a total of \$167.60 per month, though the 9.5% test is only applied to the employee-only coverage. The documents in the record are clear that the petitioner's spouse has access to insurance for himself and for petitioner. While the coverage may not be as comprehensive as petitioner would want, the rules only require that it be a HIPAA qualified plan which this appears to be.

CONCLUSIONS OF LAW

The Department did not err in determining petitioner ineligible for BC+ as her husband has current access to insurance which could also cover her.

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 29th day of May, 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 May 29, 2013.

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