



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/147939

PRELIMINARY RECITALS

Pursuant to a petition filed March 7, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on April 10, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's BadgerCare Plus (BCP) coverage was correctly ended due to access to other health 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: Katherine May, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. BadgerCare Plus (BCP) is a Wisconsin variant of MA for low-income pregnant women or families with minor children. The petitioner's household was covered by BadgerCare Plus (BCP) until March 1, 2013. On January 18, 2013, the Department issued written notice to the petitioner

advising that her BCP case would close effective February 1, 2013, due to failure to complete a periodic review. The Department received updated income information for the petitioner in early January 2013; it reflected an increase in gross BCP household income to \$2,953. When the increased income was budgeted, the result was termination of the BCP coverage for the petitioner. Notice of discontinuance of the petitioner's coverage was issued on February 8, 2013, with an effective date of March 1, 2013. The petitioner's children remain eligible for BCP. The basis for adult discontinuance was having access to other health insurance.

3. The petitioner timely filed a hearing request.
4. The household's gross BCP income of \$2,953 was reported at review and verified. This is a household of four persons; this amount of income places the household at 150.5% of the Federal Poverty Level (FPL).
5. The petitioner's employer, [REDACTED], requires the employee to pay \$279.94 or 9.4 percent of household gross income monthly for employee-only coverage. The employer's couple policy is \$475 monthly. *See*, Exhibit 2. The employer pays less than 80% of the insurance premium cost.

DISCUSSION

BadgerCare Plus is an expansion of the Wisconsin Medical Assistance program meant to provide insurance for children under 19 and their parents. *BadgerCare Plus Eligibility Handbook (BCPEH)*, 1.1. There are two major BCP benefit plans. To be financially eligible for the BCP Standard Plan (full MA benefits), a family cannot have income greater than 200% of the federal poverty line (FPL). Wis. Stats. §49.471(8). The BCP Benchmark Plan (limited services) is available to children in households with income above 200% of the poverty line, and to self-employed parents/caretakers. The petitioner's household income does not exceed 200% FPL.

Additionally, there is a hybrid nonfinancial/financial BCP eligibility test related to access to other insurance. If a household's income exceeds 133% FPL, the household cannot be eligible for BCP if it has access to employer-based health insurance. *Id.*, §7.1. In 2013, 133% of the poverty line for 4 persons was \$2,610. *See BCPEH* at §50.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>

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).

I. ACCESS – 80% TEST

So, what is "access?" Access is currently measured in two ways, either of which is disqualifying. First, the statute declares that a family has "access" to other health insurance if the employer is paying at least 80 percent of the premium:

- (8) HEALTH INSURANCE COVERAGE AND ELIGIBILITY. ...**
 (b) Except as provided in pars. (c) and (d), an individual ... is not eligible for BadgerCare Plus if any of the following applies:
1. The individual has individual or family health insurance coverage that is any of the following:

a. Coverage provided by an employer and for which the employer pays at least 80 percent of the premium.

...

(emphasis added)

Wis. Stat. §49.471(8). The parallel state code provision and policy handbook section echo the statute on this issue. Wis. Admin. Code §DHS 103.03(1)(f)3; *BCPEH*, §7.3.

None of the facts in the Findings above are in dispute. The employer is not paying at least 80% of the premium cost, so the 80% test does not disqualify the petitioner from receiving adult BCP.

II. ACCESS – 9.5% INCOME TEST

The Department also argues that adults have access to other health insurance if the premium cost does not exceed 9.5% of the household's gross income. That is the test that tripped up the petitioner here. The 9.5% income test is found in state policy as follows:

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.

BCPEH, §7.3.3. The above policy also applies to a person who could have enrolled in the employer plan in the last 12 months. This policy is in turn derived from the federal waiver amendment to BCP, granted in April 2012, and *in effect through June 2013*:

To enable the State to prevent substitution of public coverage for private coverage ...

- a) When the individual has, or had, access to employer-sponsored major medical health insurance (individual or family) in which the monthly premium that would be paid by the individual does not exceed 9.5 percent of household income (for self-only coverage) during the most recent open or special enrollment period within the previous 12 months, ...

Wisconsin BadgerCare § 1115 Waiver Authority, paragraph #1, at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Waivers.html> .

The petitioner argues that it is unfair to use her single person/"self-only" policy cost percentage (9.4 percent) to determine eligibility for both herself and her spouse. That is because the cost percentage for them as a couple is higher than the 9.5% cost eligibility threshold. Nonetheless, the federal waiver language, requested by Wisconsin, directs the agency to look only at the percentage associated with the "self-only" coverage to determine if the petitioner is BCP eligible. Her self-only percentage is under 9.5%, so she cannot be eligible for BCP at this time, due to access to the employer's insurance. The cover letter (April 2012) to the above *Waiver Authority* applies this change to both parents.

The petitioner also noted that they cannot make ends meet if she must purchase adult coverage through her employer. That may be so, but that is not something that I am legally able to take into consideration.

This Decision is consistent with that written by another Administrative Law Judge in DHA case no. BCS/144854, issued on January 3, 2013.

CONCLUSIONS OF LAW

1. The Department correctly discontinued BCP for the petitioner due to her ability to access other health insurance coverage, with the "self-only" coverage cost being under 9.5% of gross household income.

THEREFORE, it is

ORDERED

That the petition 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 15th day of April, 2013

\sNancy J. Gagnon
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 15, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability