FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

BCS/148281

PRELIMINARY RECITALS

Pursuant to a petition filed March 26, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regards to the discontinuance of Medical Assistance, a telephone hearing was held on April 25, 2013, at Milwaukee, Wisconsin. At the request of both parties, the record was held open for 10 days for the submission of additional information.

The issue for determination is whether the petition for review of whether the agency correctly discontinued the petitioner's BC+ coverage and imposed a restrictive re-enrollment period due to her failure to pay all premiums when due, is timely as a matter of law.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Belinda Bridges
Milwaukee Enrollment Services
1220 W Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1) Petitioner (CARES # [redacted]) is a resident of Milwaukee County. She is the casehead of a BadgerCare Plus household composed of herself, and two minors in her care; and all three were eligible in October, 2012.

2) Beginning in October, 2012, the petitioner was required to pay an $80 per month premium for her, individually, to continue receiving BC+ coverage; no premium was due for the children to be eligible; and she admitted that she was aware of the premium requirement.

3) Her October, 2012, premium of $80 was paid late, and received on November 7, 2012.

4) On November 19, 2012, the Department issued a Notice to the petitioner informing her that her individual BC+ coverage would end, effective December 1, 2012, because she had failed to pay a premium; and that if she did not do so by December 31, 2012, she would not be able to re-enroll for the next 12 months. See, Exhibit #1, attached Notice of Decision of 11/19/12.

5) The restrictive re-enrollment period was imposed effective December 1, 2012, and the petitioner's individual BC+ coverage was terminated effective December 1, 2012. See, Exhibit #1, p. 10; and Exhibit #3.

6) On December 3, 2012, the Department issued a second Notice to the petitioner informing her that her individual BC+ coverage would also discontinue, effective January 1, 2013, because she had failed to pay a premium; and that if she did not do so by January 31, 2013. Ibid, attached Notice of Decision dated 12/3/12.

7) The petitioner next paid a premium of $80 that was received on January 24, 2013, and attributed to the long past due premium due for November, 2012. See, Exhibit #1, at p. 9.

8) On or about February 11, 2013, the petitioner apparently attempted to pay $80 by personal check # 2017, to pay a past due or ongoing premium. See, Exhibit #5, with attached documents providing proof of some premium payments.

9) The BC+ case for the petitioner individually has terminated effective December 1, 2012, and the restrictive re-enrollment had been imposed effective December 1, 2012, so the Department refunded the petitioner's premiums on March 14, 2013, in amount, apparently, of $93. The reason for this amount is unknown, but the refund was because she could not remain enrolled.

10) The petitioner asserted that she paid the December, 2012, premium, but the agency records demonstrate it was never received and the petitioner could not provide any document proving payment of the December premium even though she said she could, and the record was held open for 10 days for her to do so.

11) On March 26, 2013, the petitioner filed an appeal contesting the agency action to terminate her individual BC+ coverage effective December 1, 2012, and impose the restrictive re-enrollment period on that same date.

DISCUSSION

First, an appeal concerning a negative action taken against a Medical Assistance recipient (including BadgerCare Plus) must be filed within 45 days of the effective date of the negative action. See, Wis. Stat. § 49.45(5); and see, Wis. Admin. Code § HA 3.03. Here, she was clearly notified by written advance notice that her BC+ coverage would end on December 1, 2012, and the restrictive re-enrollment period would be imposed that date as well. Rather than appeal at that time, she chose to attempt to pay the past due premiums, of which she was aware she had the obligation to pay. She could have done *both* to preserve her rights to appeal, but she did not. I can only conclude that her appeal is untimely as a matter of law, and I do not have jurisdiction to review the merits of the disputed issue.

Second, *even if jurisdiction were present*, the agency action must be sustained. Despite her mere assertion that at some point she paid the December, 2012, premium, the agency record makes it clear that it was not received and she has been completely unable to provide any documentary proof that she did so, despite her hearing testimony stating that she could. The record was held open to give her an opportunity to prove it, and she could not.

Based on the record, I can only conclude that she is mistaken and she did not pay the December, 2012, premium. Rather, her very late payment in January, 2013, was *attributed* to the then missing payment due for November, 2012, and her case had already been terminated *and* restricted. She was very dilatory in meeting her obligations, and in fact missed a payment triggering the discontinuance. Even were I to find jurisdiction were present, (which I do not) she missed a payment and must be discontinued and restricted as done by the agency here.

The petition for review must be dismissed.

CONCLUSIONS OF LAW

That the petition for review is untimely as a matter of fact and law; and in the alternative, even were it to have been found timely, a premium then due was not paid prior to the end of December, 2012, and the December, 2012 discontinuance of her individual BC+ eligibility and the imposition of a restrictive re-enrollment period was correct in any event.

THEREFORE, it is **ORDERED**

That the petition for review herein be, and the same hereby 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 16th day of May, 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 May 16, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability