



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/148807

PRELIMINARY RECITALS

Pursuant to a petition filed April 15, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Wisconsin Department of Health Services ["DHS"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on May 20, 2013.

The issue for determination is whether it was correct to discontinue petitioner's son's BadgerCare Plus Medical Assistance ["BC+"] effective March 28, 2013.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Shelly Quick, ESS II
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

OTHER PERSON PRESENT:

[REDACTED] [REDACTED], petitioner's wife

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County; MRR (male; 19-years-old) is petitioner's son.
2. DHS discontinued BC+ for MRR effective March 28, 2013.
3. MRR turned 19 years old on March 29, 2013.
4. MRR is not any of the following: pregnant; the parent/caretaker of a child(ren) under 19 years of age; a young adult exiting out of home care (such as foster care); or, a parent/caretaker relative whose child(ren) have been removed from the home and placed in out of home care.
5. MRR was not receiving inpatient services covered by BC+ on the day before his 19th birthday.
6. Petitioner received a *Positive Notice* from DHS dated July 3, 2008 informing him that MRR would get BC+ "until there is a change in your case or until March 31, 2009."
7. Petitioner received a *Positive Notice* from DHS dated April 9, 2010 informing him that MRR would get BC+ "until there is a change in your case or until his/her 19th birthday."
8. Petitioner received a *Negative Notice* from DHS dated April 8, 2013 informing him that MRR's BC+ was "terminated effective 03/28./2013 because [MRR] was covered from 4/1/08 until he turned 19."

DISCUSSION

In order to be eligible for BC+ a person who is 19 years of age or older must be 1 of the following: pregnant; the parent/caretaker¹ of a child(ren) under 19 years of age; a young adult exiting out of home care (such as foster care); or, a parent/caretaker relative whose child(ren) have been removed from the home and placed in out of home care. Wis. Stat. § 49.471(4) (2011-12); Wis. Admin. Code § DHS 103.03(1)(f)1. (December 2008); *BadgerCare + Eligibility Handbook* ["BC+ Handbook"] 1.1 & 2.1. MRR is not any of these things and petitioner does not claim that he is. Therefore, it was correct to discontinue MRR's BC+ effective March 28, 2013.

There is an exception to the above requirement for a child receiving inpatient services covered by BC+ on the day before his or her 19th birthday. In those cases the child remains eligible for BC+ until the end of the stay for which the inpatient services are being furnished. . Wis. Stat. § 49.471(6)(c) (2011-12). This exception does not apply to MRR because MRR was not receiving inpatient services covered by BC+ on the day before his 19th birthday.

Petitioner testified that he was told in 2010 that when MRR's BC+ ended MRR would be able to enroll in a "second-tier" BC+ plan. By this petitioner may have been referring to either the BC+ Core Plan or the BC+ Basic Plan. Unfortunately, BC+ Core applications received after October 9, 2009 are not being processed. A Waitlist was established on October 9, 2009 because the total number of applications received is greater than the amount of funding available. See, BC+ Handbook, 43.10. Likewise, the BC+ Basic Plan is also closed. Effective March 19, 2011 requests to enroll in the BC+ Basic Plan are denied because new enrollment in the program has been closed. See, BC+ Handbook 45.1.2 & 45.2.1.

¹ A *caretaker relative* means an individual who, among other things, is maintaining a residence as a child's home and who exercises primary responsibility for the child's care and control including making plans for the child. Wis. Stat. § 49.471(1)(b) (2011-12).

Finally, petitioner argues that “we did not receive a termination letter until April 11, 2013, stating his coverage ended on 3/28/2013. This seems to have violated our right to a written notice which states coverage should not be stopped or reduced until 10 days after a written notice is received.” Petitioner is referring to the April 2013 notice he received from DHS.

However, the law provides that DHS “must mail a written notice at least 10 days before the date of action . . . ” 42 C.F.R. § 431.211 (2011); See also, *Badger Care + Eligibility Handbook* 29.1; *Income Maintenance Manual* 3.2.3. As detailed in the above *Findings of Fact*, petitioner received written notice from DHS in both July 2008 and April 2010 that MRR’s BC+ would end when MRR turned 19-years-old in March 2013.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to discontinue MRR’s BC+ effective March 28, 2013.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 7th day of June, 2013

\sSean P. Maloney
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 June 7, 2013.

Brown County Human Services
Division of Health Care Access and Accountability