



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/148865

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 19, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on May 14, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely.

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: L. Yang

Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a notice dated February 11, 2013 that informed Petitioner that BadgerCare Plus (BC+) benefits for Petitioner and spouse would end effective March 1, 2013 because of access to health insurance through an employer with a premium that would cost less than 9.5% of

the household income. This notice does contain appeal instructions and does indicate that the appeal deadline was Tuesday, April 16, 2013.

3. This appeal was filed on Friday, April 19, 2013.
4. Petitioner's children continued to receive BC+ and are not at issue here.

### DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medical Assistance matters must be filed within 45 days of the effective date of the agency decision. §49.45(5)(a), *Wis. Stats.* Here Petitioner's appeal is past the April 16, 2013, is not timely and leaves the Division of Hearings and Appeals without authority to make a determination on the merits of this matter.

Even if, however, the appeal were timely I could not find for Petitioner given the following.

Petitioner's household has earned income and the amount of \$3488.50. For a household of 4 this is 181.6% of the Federal poverty level. 9.5% of Petitioner's household income is \$331.40. Petitioner's spouse has access to health insurance and her employer with the premium for Petitioner in spouse in the amount of \$200 per month. This is less than 9.5% of the household income.

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 2 persons was \$1,719. 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% PREMIUM

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.***
2. The individual, in the 12 months before applying, had access to the health insurance coverage specified in subd. 1. ...

*(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.

We did not discuss the 80% test in the instant hearing, as the next test, below, is dispositive.

## 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 past 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> .

A review of the entire eligibility section of the BadgerCare waiver document above refers only to the monthly premium cost (no mention of deductibles, co-pays, or co-insurance) when applying the 9.5% income test to an adult applicant/recipient. Thus, even if timely I would conclude that the agency's action is consistent with the waiver requirements, and that discontinuance of adult coverage was correct here.

Finally, Petitioner was sent a notice dated January 31, 2013 and for Petitioner that a premium in the amount of \$144 was due for a first for Petitioner in spouse for BadgerCare Plus (BC+) coverage. The February 2013 premium of \$144 was paid in part, \$120 was paid, by a credit to carryover from 2012. The remaining \$24 was not paid. The agency notes that this is an additional reason for discontinuing benefits the record does not contain a separate Notice of Decision noting this as a reason for discontinuance of benefits.

### **CONCLUSIONS OF LAW**

That this appeal was not timely filed thus the Division of Hearings and Appeals does not have jurisdiction to decide the merits of this matter.

**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 Milwaukee,  
Wisconsin, this 8th day of July, 2013

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\sDavid D. Fleming  
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 July 8, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability