



FH
[REDACTED]

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

In the Matter of

[REDACTED]
3269 N 28th St
Milwaukee, WI 53216

DECISION
BCS/149908

PRELIMINARY RECITALS

Pursuant to a petition filed June 7, 2013, under Wis. Stat., §49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a hearing was held on July 11, 2013, by telephone.

The issue for determination is whether the agency correctly placed petitioner in BadgerCare Plus (BC+) restrictive enrollment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In early November, 2012, petitioner reported a new job. When the income was budgeted it was high enough so that petitioner would have to pay a \$63 per month BC+ premium for her eligibility (her daughter's eligibility has not been affected by any actions taken in this appeal). By a notice dated November 19, 2012, the agency informed petitioner that she had a \$63

- premium to pay beginning December 1, 2012. The notice and a premium coupon were sent to petitioner's address on [REDACTED] Street.
3. On November 14, 2012 petitioner filed a renewal application showing her address as [REDACTED] Street.
 4. In late-November petitioner reported a new mailing address on [REDACTED]. In early December the agency noted that the [REDACTED] address also was used by the father of petitioner's daughter. Initially steps were taken to add the father to petitioner's case, but both reported that petitioner actually did not live on [REDACTED]. In the meantime the agency sent a notice to petitioner at the [REDACTED] address dated December 19, 2012 telling her that BC+ for her would end January 1, 2013 because she did not pay her December premium. The notice told her that she had until the end of the next month to still pay the premium.
 5. On December 31, 2012 petitioner faxed a new address to the agency, and the agency acted on the change on January 2. The new address was the same one that petitioner currently is using. On January 3, 2013, the agency sent petitioner a notice at her current address telling her that she is ineligible for BC+ as of January 1 and was placed in restrictive enrollment for twelve months. The notice informed her that she could appeal by February 18, 2013.
 6. Petitioner appealed these actions on June 7, 2013.

DISCUSSION

BC+ recipients must pay a monthly premium based upon income. If a recipient does not pay the monthly payment before the month after the end of the benefit month, the recipient may be ineligible for the program for twelve months. Wis. Admin. Code, §DHS 103.085(3); BC+ Handbook, Appendix 19.8.1. The penalty for missing the premium is called "restrictive re-enrollment."

Generally payments after the first month are due by the 10th of the benefit month. Handbook; App. 19.6. If a payment is missed, the agency will send a notice informing the client that benefits will end the first of the next month. If the person pays between the notice date and the first of the month, the case will not close. If the person pays after the first of the month, but before the end of that next month, the case can be reopened. See Handbook, App. 19.9.

Good cause reasons for not paying a BC+ premium include circumstances beyond the person's control such as agency errors in processing premiums, problems with electronic funds transfers, or even lost mail. "Insufficient funds" is not a good cause reason. Admin. Code, §DHS 103.085(3)(b); Handbook, App. 19.8.3.

Once a person is in restrictive re-enrollment, the entire penalty period must be served unless household income drops below the level for which a premium is required. Handbook, App. 19.11.2.

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a); Income Maintenance Manual, §3.3.2. Language concerning the right to appeal and the time limit is included as page two on all department notices. An MA appeal must be made in writing; it cannot be made orally unless it is then reduced to writing. Wis. Admin. Code, §HA 3.05(2)(a). The date of filing is the date the written appeal is received by the agency or the postmark date, whichever is earlier. Admin. Code, §HA 3.05(3)(c).

In reviewing petitioner's case record, I can see that her new job was reported in early November. On November 14, 2012, petitioner filed an on-line renewal with the [REDACTED] Street address as her residence. She affirmed that the information was correct. On November 19 the agency notified petitioner of the premium. The notice was sent to [REDACTED] Street.

On November 28 petitioner reported the [REDACTED] address. She verified the address soon after, including providing pay stubs that showed that address. On December 19 the agency sent a notice to that address, which petitioner acknowledges was the address of her daughter's father and that she used it as a mailing address.

Then on January 2, 2013 the agency processed a change report with another new address, the one that petitioner currently uses. On January 3 a notice informing petitioner of her BC+ status was mailed to the new address.

The upshot of the history is that I simply do not believe that petitioner did not receive these notices, and at very least that she did not receive the January 3 notice. It is possible that she did not receive the two earlier notices and the coupon mailing, but any failure to receive them was petitioner's fault. She reported the [REDACTED] Street address on her November renewal even though she testified at the hearing that she moved from there in June, 2012. The December 19 notice also was sent to petitioner's current reported mailing address, as was the January 3 notice. If petitioner did not see those notices it is not the fault of the agency. I think more likely that petitioner was not paying attention to the notices because her daughter remained eligible and only when she went to a doctor did she become aware of her own ineligibility.

I conclude that petitioner's appeal of the discontinuance of her BC+ and placement into restrictive enrollment was untimely. Therefore the Division of Hearings and Appeals does not have jurisdiction to review the merits of the actions and petitioner must remain in restrictive enrollment for the entire twelve months.

CONCLUSIONS OF LAW

Petitioner's appeal of a BC+ discontinuance and placement into restrictive enrollment was untimely.

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 15th day of July, 2013

\sBrian C. Schneider
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 15, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability