



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/149964

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 13, 2013, under Wis. Stat. §49.45(5)(a), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance (MA), a hearing was held on July 09, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the petitioner's BadgerCare Plus (BCP) coverage was correctly terminated on June 1, 2013 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: Kathy Christman

Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner received BCP with her child.

3. On April 22, 2013 the agency received a wage cross match discrepancy regarding petitioner's income. The agency sent a Notice of Proof Needed to petitioner requesting that she provide paycheck stubs from her employer. The information was due back to the agency on May 1, 2013.
4. On May 6, 2013 the agency issued notice to petitioner that her BCP was closing effective June 1, 2013 for failing to provide verification. On May 15, 2013 the agency received the requested verification about petitioner's income.
5. The petitioner's total household income is \$2506.92 per month. This amount exceeds 133% of the federal poverty level for a household of 2.
6. The petitioner is offered health insurance subsidized by her employer. Her employer pays 80% of the premium. Her share of the premium is \$100.56 if only she is covered or \$191.08 if her child(ren) is/are also covered.
7. On May 28, 2013 the agency issued notice to petitioner that her BCP would remain closed in July 2013 because she had access to other health insurance. Her daughter remained eligible through June.

### DISCUSSION

To be eligible for BCP, a person must be under age 19, a custodial parent, or the spouse of a custodial parent. Wis. Admin. Code, §DHS 103.03(1)(f)1. Effective July 1, 2012, the Department implemented new provisions concerning BCP eligibility for families with access to employer sponsored insurance. BCP Handbook, §7.3.1. Under the new policy, if an employer provides health insurance, members of the household are ineligible for BC+ under certain circumstances. BCP Handbook, §7.3.3. The new policy provides:

Beginning July 1, 2012, there are two Current Access policies in effect:

- The 80% Current Access Test.
- The 9.5% Current Access Test.

The 9.5% Current Access Test will be applied on or after July 1, 2012, but only to adult parents and caretakers and only when:

- A new [application](#) or program request is submitted,
- New employment is reported,
- The next review/renewal is completed, or
- A parent or caretaker with employment is added to the assistance group.

Until one of the above circumstances occurs, the 80% Current Access Test will continue to apply to all non-pregnant, non-disabled parents and caretakers.

The 80% Current Access Test will continue to apply to non-exempt (See [7.1](#)) children.

BCP Handbook, §7.3.1.

Nowhere in the evidence is there a showing that one of the above circumstances existed at the time of the agency's action. Rather, it appears the agency requested verification of mandatory information regarding petitioner's MA eligibility after it received information showing that the information it had was questionable. When she failed to provide it by the deadline, the agency sent a notice to close her case. However, she provided the verification prior to the closure of her case on June 1. Thus, there was no

break in service, no new application was made, no review was completed, and no one was added to the assistance group. As such, I find the agency acted a bit prematurely in closing her case under the 9.5% policy.

### **CONCLUSIONS OF LAW**

The petitioner's BCP coverage was incorrectly terminated on June 1, 2013 due to access to other health insurance.

**THEREFORE, it is**

### **ORDERED**

That this matter is remanded to the agency with instructions that within 10 days of the date of this decision it redetermine petitioner's eligibility for MA effective June 1, 2013. The agency shall thereafter issue a notice of decision to petitioner regarding the redetermination, and certify her if eligible. In all other respects, the petition for review herein 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 12th day of August, 2013

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\sKelly Cochrane  
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 August 12, 2013.

Kenosha County Human Service Department  
Division of Health Care Access and Accountability