



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCC/149972

PRELIMINARY RECITALS

Pursuant to a petition filed June 13, 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 – BadgerCare Plus Core Plan, a telephone hearing was held on July 18, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly discontinued the petitioner’s BadgerCare Plus Core Plan eligibility because he did not complete a renewal application.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Lee Yang, HSPC
Milwaukee Enrollment Services
1220 W Vliet St
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. He is a single adult and was receiving BadgerCare Plus Core Plan benefits in at least April, 2013.
2. On or about March 11, 2013, the Department issued a letter to the petitioner informing him that he needed to complete a renewal application for BC+ Core Plan online or by telephone; take a short health survey online or by phone; and pay the \$60 annual renewal processing fee. All of these acts needed to be completed by April 30, 2013.

3. On or about April 16, 2013, the petitioner contacted the Department by telephone to complete the renewal application telephonically, did so with an agency worker, and was told that the Department would mail him a copy of the application in the near future. On that same date, the petitioner mailed the \$60 renewal fee to the Department's lockbox address in Milwaukee.
4. On April 16, 2013, the petitioner contacted his employer and requested that it provide proof of his job and wages to the Department; the employer did so; and this document was received by the Department on April 18, 2013; and separately by its Centralized Document Processing Unit on April 24, 2013. See, Exhibit #1, attached letter from SHO.
5. On April 17, 2013, the Department issued a second letter to the petitioner again informing him that he needed to complete a renewal application for BC+ Core Plan and pay the renewal fee, by April 30, 2013.
6. On April 18, 2013, the Department received the \$60 annual renewal processing fee from the petitioner.
7. The Department has neither Case Comments nor CARES computer database information for the petitioner's April 16, 2013, telephone renewal application in its possession, for reasons unknown.
8. On April 30, 2013, the Department closed the petitioner's BC+ Core Plan case, terminating his eligibility.
9. On June 13, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the discontinuance of his BC+ Core Plan eligibility. Benefits were not continued pending the hearing decision.

DISCUSSION

In a fair hearing concerning the discontinuance of benefits, even the "denial" of a renewal application, the burden of proof is on the Department to show by the preponderance of the evidence that the request for assistance was correctly denied. The burden then shifts to the recipient to establish that the discontinuance decision was incorrect.

In this case, the Department made a prima facie case that it received the \$60 payment but not the requisite renewal application and health survey. The Department's case is based upon a negative inference derived by omission of facts, i.e., that there is no indication in the CARES database that the petitioner contacted the agency in April, 2013, and completed the renewal and health survey.

The petitioner adamantly testified in a clear and consistent manner, partially corroborated by the contemporaneous submissions of the payment and income information, that he *did* immediately act on April 16, 2013, to make the payment, have his employer send in proof of income, and complete the renewal application and survey by telephone on April 16, 2013. I found his testimony to have the ring of truth about it, and to be credible.

The agency representative replied that there are no Case Comment entries or data entries of the application that support that this application in fact occurred.

Be that as it may, there is proof that the petitioner paid the fee and submitted the income information in a fashion totally consistent with his testimony that he did all three acts on April 16, 2013.

The agency action is to be reversed. The petitioner has sufficiently rebutted the prima facie case such that I conclude that he did attempt to complete the renewal application and survey, and this information was lost or not processed. The agency is to act to provide the petitioner with an opportunity to complete the renewal application and health survey nunc pro tunc, i.e., *as if he had done so on April 16, 2013*. In

addition, if the \$60 payment has been returned to him, the petitioner must of course pay it again. The agency will then re-process the application as outlined in the ORDER, below.

As a side note to the petitioner, *he must ensure that he has completed the renewal application, health survey and made the \$60 renewal fee payment within 15 days of the date of this DECISION, or in the alternative form, his appeal will be dismissed entirely.* His potential eligibility is predicated upon these events occurring.

CONCLUSIONS OF LAW

That the petitioner completed the renewal application and health survey with the Department on April 16, 2013, but both were lost for reasons unknown and not entered into the CARES database; that the matter must be remanded for re-submission of the annual fee if still due, plus completion of the renewal application.

THEREFORE, it is

ORDERED

That the matter is remanded to the Department with instructions to: immediately notify the petitioner of a telephone appointment for a renewal application and health survey, in writing; conduct the application and survey interviews as if performed on April 16, 2013; accept re-payment of the \$60 annual renewal fee from the petitioner if the original payment is no longer in the Department's possession, giving the petitioner 15 days to perform these tasks; review and re-determine the petitioner's eligibility for BC+ Core Plan and certify him for all BC+ Core Plan benefits to which he was otherwise entitled, if any, retroactive to May 1, 2013, with written notice. These actions shall be completed within 25 days of the date of this Decision. **IT IS FURTHER ORDERED**, that *if* the petitioner does not complete the renewal application, health survey and make payment of the annual fee within 15 days of the date of this Decision, *then* in the alternative this appeal is dismissed in its entirety.

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 22nd day of July, 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 July 22, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability