



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCB/149995

PRELIMINARY RECITALS

Pursuant to a petition filed June 12, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Marinette County Department of Human Services in regard to Medical Assistance, a hearing was held on July 15, 2013, at Marinette, Wisconsin.

The issue for determination is whether the Department erred in finding petitioner ineligible for BC+ due to available health insurance through her husband's employer.

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: Rae LaCombe

Marinette County Department of Human Services
Wisconsin Job Center Suite B
1605 University Drive
Marinette, WI 54143

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marinette County.

2. Petitioner's husband is employed and earns between \$288 and \$450 per week in gross pay.
3. Petitioner's husband had employee+spouse health insurance available for a premium of \$53.74 per month.
4. Petitioner was found ineligible for BC+ due to available employer sponsored health insurance.
5. Petitioner filed an appeal.

DISCUSSION

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).

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.*

The 9.5% Current Coverage Test will be applied on or after July 1, 2012, but only to non-exempt 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.*

In this case, the 9.5 percent test was properly applied because this was a periodic review of eligibility. At the time of hearing, petitioner disputed that insurance was available with a premium of less than 9.5% of the gross income. Following the hearing, petitioner sent in copies of pay stubs at the request of this ALJ (see ex. #3). The pay stubs reflect an inconsistent weekly gross ranging from \$288 to \$450. It appears that \$375 or \$400 is the usual weekly gross. Exhibit #3, supplied by petitioner, also reflects that employee+spouse insurance is available for \$53.74 per month. Even if the lowest weekly gross is taken (\$288) and multiplied by 4.3 weeks per month (monthly gross=\$1,238.40) the premium amount of \$53.74 is far less than 9.5 percent of that gross pay.

Petitioner also notes that deductibles are high and that her husband has inexpensive insurance through the VA. But, these are not considerations for eligibility for this state public benefit program. Petitioner has available health insurance through her husband's employer and the premium for that insurance is less than 9.5 percent of gross salary. The BC+ Program does not cover a person who has such access.

CONCLUSIONS OF LAW

The Department did not err in determining petitioner ineligible for BC+.

THEREFORE, it is

ORDERED

That this appeal 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
Madison, Wisconsin, this 6th day of
September, 2013

\sJohn P. Tedesco
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 September 6, 2013.

Marinette County Department of Human Services
Division of Health Care Access and Accountability