



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o Atty Andrew Weininger
[Redacted]
[Redacted]

DECISION

BCC/150001

PRELIMINARY RECITALS

Pursuant to a petition filed June 14, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on July 29, 2013, at Madison, Wisconsin. At the request of the parties, the record was held open for two weeks for briefs from the petitioner's attorney and a response by the county agency. Those documents were timely received at DHA and received into the hearing record.

The issue for determination is whether the county agency correctly discontinued the petitioner's BadgerCare (BC) Core benefits effective May 1, 2013, due to his incarceration in the [Redacted].

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
c/o Atty Andrew Weininger
[Redacted]
[Redacted]

Petitioner's Representative:

Attorney Andrew D. Weininger

[Redacted]
[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Robin McMillan, ESS
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County who resides in a home with his mother.

2. The petitioner was incarcerated as an inmate in the [REDACTED] from March 17, 2013 until his release from jail on June 27, 2013.
3. The petitioner failed to timely notify the county agency of his incarceration within 10 days of his incarceration, as required by BadgerCare policy, 43.8.1, #2.
4. The county agency sent an April 17, 2013 Notice of Decision to the petitioner to his address of record stating that his BadgerCare Core benefits would be discontinued effective May 1, 2013, because inmates of a jail or prison are not eligible for BadgerCare benefits pursuant to the BadgerCare Plus Handbook, 3.6, “inmates.”

DISCUSSION

The BadgerCare Plus (BCP) “Core Plan” is a Wisconsin variant on MA for adults without dependent children, which provides basic health care coverage to adults who do not otherwise qualify for Medicaid or the BadgerCare+ Standard or Benchmark Plans. Inmates of a jail or prison are not eligible for BadgerCare benefits pursuant to the BadgerCare Plus Handbook, 3.6, “inmates.”

During the July 29, 2013 hearing, the hearing record was uncontested that petitioner was an inmate in the [REDACTED] from March 17, 2013 until his release on June 27, 2013. Due to his incarceration, the county agency sent an April 17, 2013 Notice of Decision to the petitioner to his address of record stating that his BadgerCare Core benefits would be discontinued effective May 1, 2013 based upon BadgerCare Plus Handbook, 3.6.

During the hearing and in his brief, petitioner’s counsel argued that petitioner did not receive timely notice of his BC terminating as of May 1, 2013, because the April 17, 2013 was sent to his home address and not to the [REDACTED]. He argued that the county agency was aware of his incarceration, and therefore should have sent that termination notice to petitioner at the jail because he was “currently in custody.” Attorney Weininger cited to general Administrative Code section DHS 103.09(4) which stated in pertinent part: “. . . The agency shall give the recipient timely advance notice and explanation of the agency’s intention to terminate MA. This notice shall be in writing and shall be mailed to the recipient at least 10 calendar days before the effective date of the proposed action.” However, Mr. Weininger did not provide any legal authority for the alleged requirement that a notice must be sent to an inmate in temporary custody, and not to his/her permanent address.

The county representative persuasively responded that petitioner failed to timely notify the county agency of his incarceration within 10 days of his incarceration, as required by BadgerCare policy, 43.8.1, #2. Petitioner was unable to provide any evidence that he had timely notified the county agency of his incarceration or that he requested that his mail be sent to him at the county jail. Furthermore, petitioner admitted that his mother received his mail. Petitioner’s mother certainly could have provided that mail (including the April 17, 2013 notice) to the petitioner or read his important mail for him during his incarceration. The petitioner’s attorney failed to establish any legal requirement that the county agency forward petitioner’s mail to the county jail when it becomes aware of a temporary incarceration.

The BadgerCare Plus Eligibility Handbook provides that BC recipients must report to a county agency within ten calendar days “if s/he becomes institutionalized or incarcerated.” BadgerCare Handbook, §43.8.1, #2. The county agency established that the petitioner failed to timely report to the county agency his incarceration or that he wanted his mail to be sent to him at the jail address. The petitioner was unable to refute that he failed to timely report his incarceration to the county agency or that he wanted his mail sent to the jail. Accordingly, based upon the above, I conclude that the county agency correctly discontinued the petitioner’s BadgerCare (BC) Core plan effective May 1, 2013, due to his incarceration as an inmate in the [REDACTED].

CONCLUSIONS OF LAW

The county agency correctly discontinued the petitioner's BadgerCare (BC) Core plan effective May 1, 2013, due to his incarceration as an inmate in the [REDACTED] pursuant to the BadgerCare Plus Handbook, 3.6, "inmates."

THEREFORE, it is

ORDERED

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 18th day of September, 2013

\sGary M. Wolkstein
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 18, 2013.

Dane County Department of Human Services
Division of Health Care Access and Accountability
andrew@lindweininger.com