



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/150097

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed June 17, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Langlade County Department of Social Services in regard to Medical Assistance, a hearing was held on August 05, 2013, at Antigo, Wisconsin.

The issue for determination is whether petitioner and her husband are ineligible for BadgerCare Plus (BC+) because of insurance available through an 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: Patsy Rolo

Langlade County Department of Social Services  
1225 Langlade Road  
Antigo, WI 54409-2795

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Langlade County.
2. Petitioner received BC+ until May 31, 2013, when her benefits were terminated due to the availability of health insurance through her husband's employer.

3. In June, 2013, respondent determined that petitioner has access to a health insurance plan through her husband's employer, and the premium for the employee's coverage would not exceed 9.5% of household income. Household income was \$3,855.60 per month. Thus by a notice dated June 3, 2013, the agency denied BC+ for petitioner and her husband. Their three children remained eligible for BC+ with no premium.
4. The health insurance through the employer costs \$155.00 for employee-only coverage. For employee plus spouse coverage, the premium is \$654.21.

### DISCUSSION

To be eligible for BC+, 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. 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). 133% of the federal poverty level for a family of five is \$3,055.68. A HIPAA plan is any group plan that provides medical care to individuals and/or their dependents. Wis. Stat. §49.471(1)(g).

#### I. ACCESS-80% PREMIUM

"Access" is currently measured in two ways, either of which is disqualifying. First, the statute declares that a family has "access" to other health insurance if the employer is paying at least 80 percent of the premium:

**(8) HEALTH INSURANCE COVERAGE AND ELIGIBILITY. ...**

(b) Except as provided in pars. (c) and (d), an individual ... is not eligible for BadgerCare

Plus if any of the following applies:

1. The individual has individual or family health insurance coverage that is any of the following:
  - a. Coverage provided by an employer and for which the employer pays at least 80 percent of the premium. ...*
2. The individual, in the 12 months before applying, had access to the health insurance coverage specified in subd. 1. ...

Wis. Stat. §49.471(8) (*emphasis added*). The parallel state code provision and policy handbook section echo the statute on this issue. Wis. Admin. Code §DHS 103.03(1)(f)3; *BCPEH*, §7.3.

We did not discuss the 80% test in the instant hearing, as the next test, below, is dispositive.

#### II. ACCESS – 9.5% INCOME TEST

The Department also argues that adults have access to other health insurance if the premium cost does not exceed 9.5% of the household's gross income. Respondent calculated petitioner's gross monthly income at \$3,855.60, based upon year-to-date wage information provided by petitioner's husband's employer.

The 9.5% income test is found in state policy as follows:

### 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.

*BCPEH*, §7.3.3. The above policy also applies to a person who could have enrolled in the employer plan in the past 12 months. This policy is in turn derived from the federal waiver amendment to BCP, granted in April 2012, and in effect through June 2013:

To enable the State to prevent substitution of public coverage for private coverage ...

- a) When the individual has, or had, access to employer-sponsored major medical health insurance (individual or family) in which the monthly premium that would be paid by the individual does not exceed 9.5 percent of household income (for self-only coverage) during the most recent open or special enrollment period within the previous 12 months, ...

*Wisconsin BadgerCare § 1115 Waiver Authority*, paragraph #1, at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Waivers.html> .

The petitioner argues that it is unfair to use this policy cost percentage to determine her eligibility because she cannot make ends meet. She also argues that the cost of the “employee plus spouse” premium should be factored into the premium cost calculation, as opposed to simply applying the “employee only” premium.

I have read the eligibility section of the BadgerCare waiver document above, and found that it consistently refers only to the monthly premium cost (no mention of deductibles, co-pays, or co-insurance) for the employee only when applying the 9.5% income test. Thus, I must conclude that the agency’s action is consistent with the waiver requirements, and that discontinuance of adult coverage was correct here.

### CONCLUSIONS OF LAW

The agency correctly discontinued BC+ for petitioner and her husband because he has access to a health insurance plan through his employer.

**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 13th day of September, 2013

---

\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Wayne J. Wiedenhoef, Acting Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 13, 2013.

Langlade County Department of Social Services  
Division of Health Care Access and Accountability