



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/150630

PRELIMINARY RECITALS

Pursuant to a petition filed July 10, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on August 19, 2013, at Racine, Wisconsin.

The issue for determination is whether the Racine County Department of Human Services (the agency) correctly terminated Petitioner's BadgeCare+ benefits, effective June 1, 2013.

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, Lead Financial Employment Planner
Racine County Department of Human Services
1717 Taylor Ave.
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On April 25, 2013, the agency sent Petitioner a notice indicating that effective May 1, 2013, she would need to pay a \$64.00 per month premium in order to receive Badger Care+ benefits. The notice was sent to [REDACTED]. (Exhibit 8)

3. On May 17, 2013, the agency sent Petitioner a notice, to the [REDACTED] address, indicating that as of June 1, 2013, her Badger Care+ benefits would be ending, because she had not paid the premium and that if she wanted to continue receiving benefits, she would need to pay the premium right away. The notice further advised Petitioner that if she did not pay the premium by the end of June, she would be placed in restrictive re-enrollment for 12 months. (Exhibit 9)
4. Petitioner did not pay the premium. (Testimony of Ms. Christman; *See also* Testimony of Petitioner; and Exhibit 5)
5. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 10, 2013. (Exhibit 1)

DISCUSSION

Unless a member of a category of exempt individuals (i.e. pregnant women under age 19, continuously eligible newborns, etc.) the following individuals must pay a premium to become or remain eligible for BadgerCare+:

1. Children in families with income over 200% of the Federal Poverty Level (FPL)
2. Parents, stepparents and caretaker relatives with income over 133% through 200% of the FPL
3. Parents, stepparents and caretaker relatives with income over 133% in a BadgerCare+ extension and
4. Self-employed parents, stepparents and caretaker relatives with income above 200% of the FPL before subtracting the depreciation but below 200% of the FPL after subtracting the depreciation.

BadgerCare+ Eligibility Handbook (BEH) §19.1

If the (adult) individual fails to pay the premium, her BadgerCare+ case will close. She will not be allowed to re-enroll in BadgerCare+ for 12 months, unless the failure to pay was for good cause. Wis. Adm. Code § DHS 103.085(3)(b)1; *BEH § 19.8.1*

Good cause for not paying a premium includes the following:

1. Problems with the financial institution.
2. CARES problem.
3. Local agency problem.
4. Wage withholding problem.
5. Fair hearing decision.

BadgerCare Plus Eligibility Handbook, § 19.8.3

It is undisputed that Petitioner did not pay the required premium. Petitioner asserts that she had good cause for her failure to pay the premiums because she never received the April 25, 2013 notice, advising her of the need to pay a premium nor did she receive that May 17, 2013 notice advising her that her benefits would end effective June 1, 2013, if she did not pay her premium.

Although a failure to send the required notice would be a problem with the CARES system, there is no assertion that the agency failed to mail the April 25, 2013 and May 17, 2013 notices; it is only asserted that the notice was not received, but the preponderance of the credible evidence supports the conclusion that the notice was properly mailed and received.

Wis. Stats. §891.46 creates a presumption that service has occurred upon mailing, stating that, “summons, citations, notices, motions and other papers required or authorized to be served by mail in judicial or administrative proceedings are presumed to be served when deposited in the U.S. mail with properly affixed evidence of prepaid postage.” Further, “the mailing of a letter creates a presumption that the letter was delivered and received.” State ex. rel Flores, 183 Wis.2d 587 at 612, 516 N.w.2d 362 (1994) Once it has been established that a letter was sent in the ordinary course of business, the party challenging the presumption bears the burden of presenting credible evidence of non-receipt. Id at 613.

The agency’s representative testified that the April 25th and May 17th notices were mailed to Petitioner. Petitioner confirmed that the notices were mailed to her at the correct address. The agency’s representative testified that there was no indication in Petitioner’s file that the notices were returned to the agency as undeliverable, nor were there any irregularities noted in the case comments. Petitioner testified that there is no reason why she would not have received the April 25th and May 17th notices. Petitioner is clearly able to receive mail at her address. Indeed, given Petitioner’s appearance at the August 19th hearing, it is reasonable to conclude that she received the notice of the hearing that was mailed by the Division of Hearings and Appeals to Petitioner at the same [REDACTED] address. Based upon the foregoing, it is found that Petitioner timely received the April 25, 2013 and May 17, 2013 notices.

Because Petitioner timely received the April 25th and May 17th notices, and because the May 17th notice advised Petitioner that she had until the end of the following month to pay her premiums, Petitioner’s claim that she did not have adequate notice regarding the need to pay a premium is without merit and cannot be considered good cause under the categories, “problems at the local agency” or “with the CARES system”.

CONCLUSIONS OF LAW

The agency correctly terminated Petitioner’s BadgeCare+ benefits, effective June 1, 2013.

THEREFORE, it is

ORDERED

That the Petition 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 19th day of August, 2013.

\sMayumi M. Ishii
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 19, 2013.

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