



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/150794

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 22, 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 August 26, 2013, at Madison, Wisconsin.

The issue for determination is whether the Department erred in its termination of medical assistance due to available employer-sponsored health insurance.

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: Sandy Schroeder

Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner was enrolled in BadgerCare and underwent a review of eligibility in June 2013.

3. Petitioner is employed at [REDACTED]. Petitioner has an employee-only HIPAA health insurance plan available through her employer with a premium of less than 9.5% of her monthly gross income. The premium is \$50.00 per month. Petitioner's monthly gross income in June at the time of the review was \$2,000.
4. On June 17, 2013, the Department sent notice to petitioner informing her that she was no longer eligible for BC+ effective July 1, 2013.
5. Petitioner's employment terminated in August and she is now enrolled in BadgerCare again.
6. Petitioner appealed.

### 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).

The Handbook provides:

#### ***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.

Petitioner did not dispute the income numbers claimed by the Department. Petitioner did not dispute the availability of, or the premium cost of the available employer-sponsored insurance as asserted by the Department. Petitioner only argued that the premiums are too expensive and the out of pocket costs are quite high. I must apply the law and rules of the program. The pertinent determination looks at the premium amount and whether it exceeds 9.5% of gross income. Co-pays and other costs are not considered under the rules and are not relevant for these purposes. Petitioner had a plan available that met the criteria under the program and made her ineligible for BC+.

**CONCLUSIONS OF LAW**

The Department did not err in determining that petitioner was not eligible for BC+ in July 2013.

**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 27th day of September, 2013

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\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 27, 2013.

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