



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/150904

PRELIMINARY RECITALS

Pursuant to a petition filed July 22, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a telephone hearing was held on August 20, 2013.

The issue for determination is whether respondent correctly placed petitioner into restrictive reenrollment following her failure to pay her monthly BadgerCare Plus (BCP) premium.

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: Thomas Miller

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. Petitioner was notified that she had to pay a \$40 premium for April, 2013 BCP.

3. On April 11, 2013, petitioner's husband delivered a check in the amount of \$40 to respondent, and additionally submitted an executed form permitting the respondent to make automatic monthly withdrawals of the premium via Electronic Funds Transfer (EFT). The payment was processed on April 15, 2013, and the monthly electronic withdrawal paperwork was forwarded to respondent's Madison office.
4. By a notice dated May 9, 2013, the respondent informed petitioner that her EFT payments would commence on June 1, 2013.
5. On May 17, 2013, petitioner was advised that BCP benefits for her four minor children would be discontinued due to failure to pay the May premium. The notice further indicated that if the premium is not paid, the minor children may not be eligible to enroll in BCP for the next 6 months.
6. The May premium was not paid, and petitioner's minor children were placed in restrictive reenrollment as of June 1, 2013.

DISCUSSION

BCP recipients must pay a monthly premium based upon income. If a recipient does not pay the monthly payment before the month after the end of the benefit month, a minor recipient may be ineligible for the program for six months (for adults, the period is twelve months). Wis. Admin. Code, §DHS 103.085(3); BCP Handbook, § 19.8.1. The penalty for missing the premium is called "restrictive re-enrollment."

Generally payments after the first month are due by the 10th of the benefit month. Handbook; § 19.6. If a payment is missed, the agency will send a notice informing the client that benefits will end the first of the next month. If the person pays between the notice date and the first of the month, the case will not close. If the person pays after the first of the month, but before the end of that next month, the case can be reopened. See Handbook, § 19.9.

Good cause reasons for not paying a BCP premium include circumstances beyond the person's control such as agency errors in processing premiums, problems with electronic funds transfers, or even lost mail. "Insufficient funds" is not a good cause reason. Admin. Code, §DHS 103.085(3)(b); Handbook, § 19.8.3.

Once a person is in restrictive re-enrollment, the entire penalty period must be served unless household income drops below the level for which a premium is required. Handbook, App. 19.11.2. In this case petitioner did not pay the May 2013, premium in May or June, 2013. As of July 1, 2013, she no longer could pay the premium to get out of restrictive re-enrollment.

Petitioner argued that she assumed that the EFT was in place and paying the monthly BCP premiums. She does not recall ever receiving the May 9, 2013 notice identifying June as the commencement month for the EFT payments. In fact, she testified that she was verbally informed by an employee of respondent that the EFT would commence in May, 2013. Respondent concedes the confusion that arose here, in light of the fact that the EFT paperwork was submitted in early April, 2013.

This is a very close case, but based upon the specific facts evident in this record, I conclude that the petitioner made every reasonable effort to comply with the respondent's premium requirement. I found petitioner's testimony pertaining to her understanding that the EFT payments would commence in May, 2013, to be credible, reasonable, and corroborated by the evidence. As such, I will remand this matter to the respondent to remove petitioner's minor children from restrictive reenrollment.

CONCLUSIONS OF LAW

Petitioner has established that the failure to make a premium payment in May, 2013, was due to respondent's representation that said premium payment would be made via EFT.

THEREFORE, it is

ORDERED

That this matter shall be remanded to the respondent to remove petitioner's minor children from restrictive reenrollment. Respondent shall offer to reinstate petitioner's household BCP benefits effective June 1, 2013, if petitioner pays all outstanding premiums. In the alternative, petitioner may opt to have benefits commence as of the date of this Decision, and in such case, respondent shall re-determine the monthly premium, if any, from the date of this Decision onward. All actions required by this Order shall be completed within 10 days following issuance of this Decision.

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

\sPeter McCombs
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.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability