



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

AMENDED DECISION

BCS/150944

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 24, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Dunn County Department of Human Services in regard to Medical Assistance, a hearing was held on August 19, 2013, at Menomonie, Wisconsin.

The issue for determination is whether the county agency correctly ended the petitioner's eligibility for BadgerCare Plus because she had been placed in restrictive enrollment and her income exceeded 133% of the federal poverty level.

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: Serena Stipek

Dunn County Department of Human Services  
808 Main Street  
PO Box 470  
Menomonie, WI 54751

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Dunn County. She lives with her minor child.

2. The county agency notified the petitioner on December 19, 2013, that she would be ineligible for BadgerCare Plus from January 1 through December 31, 2013, because she failed to pay a premium when it was due.
3. The petitioner was found eligible for BadgerCare Plus from May through July 2013 because her income was less than 133% of the federal poverty level.
4. The petitioner's income increased to \$1,876.32 in July 2013.
5. For a two-person household, \$1,876.32 is 145.16% of the federal poverty level. *BadgerCare Plus Handbook*, § 50.01.
6. The county agency ended the petitioner's BadgerCare Plus benefits as of August 1, 2013, because her income exceeded 133% of the federal poverty level and she remained under a restrictive enrollment sanction.
7. The petitioner filed her only appeal of the agency's actions on July 24, 2013.

### **DISCUSSION**

I note initially that an earlier decision indicated that the petitioner withdrew her request for a hearing. That was incorrect. This amended decision will determine her appeal on the merits of her claim.

The petitioner had been receiving medical assistance under BadgerCare Plus, which covers children under 19 and their parents. Wis. Stat. § 49.665. The county agency ended her benefits as of January 1, 2013, because she failed to pay her premium for that month of coverage. The program's rules require recipients to pay a premium by "the 10th of the month prior to the month for which the premium is required." Wis. Admin. Code § DHS 103.085(1)(d)2. If a person fails to pay the premium by the end of the month for which it is due, benefits end on the last day of that month. Wis. Admin. Code § DHS 103.085(1)(d)3. In addition, those whose benefits end because they did not pay a premium cannot reenroll for 12 months (the period is six months for their children) unless they did not pay because of circumstances beyond their control and "all past due premiums have been paid in full." Wis. Admin. Code, § DHS 103.085(3)(b)1; *BadgerCare Plus Handbook*, 19.11. However, there is an exception to this rule that allows those whose household income fall below 133% of the federal poverty level to regain their benefits. *Id.*, § 19.11.2. The petitioner was reinstated into the program as of May 1, 2013, because her household income fell below 133% of the federal poverty level. She found new employment in July 2013, and the agency ended her benefits as of August 1, 2013, because her income now exceeded 133% of the federal poverty level and she remained under the restrictive enrollment sanction.

The petitioner cannot challenge the underlying decision that ended her eligibility on January 1, 2013, and restricted her right to reenroll for one year because she did not appeal within 45 days of the date her benefits ended, as is required by Wis. Admin. Code, § HA 3.05(3). (She filed her only appeal on July 24, 2013. This means she can only challenge the agency's finding that her benefits must end because her income is now \$1,876.32, which is 145.16% of the federal poverty level for a two-person household. Because she does not challenge the agency's finding that her income now exceeds 133% of the federal poverty level, I must uphold its decision to again restrict her right to enroll in BadgerCare Plus.

### **CONCLUSIONS OF LAW**

1. The petitioner cannot appeal the underlying restrictive enrollment finding that runs from January 1, 2013, through December 31, 2013, because she did not file an appeal of that issue within 45 days.
2. The county agency correctly ended the petitioner's BadgerCare Plus benefits as of August 1, 2013, because her income exceeded 133% of the federal poverty level and she remained covered by a restrictive enrollment determination.

**THEREFORE, it is**

**ORDERED**

The petitioner's 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 9th day of September, 2013

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\sMichael D. O'Brien  
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 9, 2013.

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