



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/151180

PRELIMINARY RECITALS

Pursuant to a petition filed August 06, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Manitowoc County Department of Human Services in regard to Medical Assistance, a hearing was held on September 03, 2013, at Manitowoc, Wisconsin.

The issue for determination is whether the respondent correctly terminated petitioner's BadgerCare enrollment.

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: Michelle Koepfel

Manitowoc County Department of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County. Petitioner was a BadgerCare recipient, and was required to pay a monthly premium in at least April, 2013.
2. On April 17, 2013, respondent sent a notice to petitioner advising her that the April, 2013, monthly premium in the amount of \$80.00 had not been received.

3. Petitioner's submitted premium was processed on or about April 23, 2013.
4. When petitioner's case was updated following receipt of the April premium, respondent noted that petitioner had access to health insurance through her employer.
5. Petitioner did not receive a BadgerCare premium coupon for May, 2013.
6. Petitioner's BadgerCare eligibility ended on May 1, 2013, and her minor son's eligibility ended on May 31, 2013.

DISCUSSION

This is an extremely confusing case, with no supporting documentation provided by the respondent. It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. By seeking to end the petitioner's benefits, the agency is the moving party. The Department acknowledged the principle laid down in *Hanson* in *Final Decision ATI-40/87198* where Deputy Secretary Richard Lorang ruled on August 17, 1995, that in any fair hearing concerning the propriety of an agency action, the county or state agency has the burden of proof to establish that the action it took was proper given the facts of the case. In the matter before me, the agency's burden is by the preponderance of the credible evidence. The respondent's entire case rests upon its assertion that the petitioner had access to affordable health insurance through her employer.

The respondent has submitted nothing to corroborate its testimony regarding petitioner's access to affordable insurance. Respondent has testified that petitioner's employer covers at least 80% of the employee's premium, but has not provided any proof of that.

Nor has the respondent submitted as exhibits any notices regarding the termination of benefits. "A member must receive a notice at least ten days prior to a negative action such as a termination of benefits, a change from the Standard plan to the Benchmark plan or an increase in premium." *BadgerCare Plus Eligibility Handbook* § 29.1. Nothing in the record reveals that such a notice was provided to the petitioner prior to July 2, 2013. Unfortunately, while I have no reason to doubt that notice was sent July 2, 2013, this manual notice was not submitted as an exhibit, and I cannot verify its contents.

A written statement prepared by the respondent for the instant hearing (and referenced in testimony at hearing) indicated that an April 17, 2013, notice informed petitioner that her BadgerCare benefits would terminate on April 30, 2013, due to her failure to pay her April premium. Exhibit 2. On or about the same date as that April notice, the petitioner paid her April premium. The referenced April 17, 2013, notice was not submitted for the record; in any case, I would decline to consider that to constitute proper notice of the termination of BadgerCare benefits, since the petitioner addressed that notice's main concern, i.e., payment of the April, 2013, premium.

The respondent testified that while processing the premium payment, the respondent discovered a new reason for terminating petitioner's coverage (access to affordable health insurance through employer), but it does not appear that the respondent concurrently notified petitioner of that new reason. The respondent's narrative exhibit explains:

A call center worker took a call 6/26 from [REDACTED], an insurance agent, who was confused on the notices and in the end, turned it over to her lead worker who got information from the help desk that this worker needed to send out a manual negative notice to [REDACTED]. I got an email from this worker 7/2 requesting I send out that manual notice of termination of benefits, which I did, indicating that the reason her insurance ended was the fact [REDACTED] had access to affordable health insurance.

Exhibit 2. This is the only evidence in the record of a notice provided to the petitioner that her BadgerCare coverage was ending due to access to insurance.¹ And it did not go out until July 2, 2013. The delay in notifying petitioner that her eligibility had ended constitutes agency error. Petitioner testified that she never knew that her coverage had ended. Without any documentation of earlier notice to the petitioner, the respondent cannot establish that it provided proper notice to the petitioner of her benefits ending as of May 1, 2013. Therefore, based upon the evidence before me, I must conclude that the petitioner remains eligible for BadgerCare.

CONCLUSIONS OF LAW

Respondent has not established the basis for the termination of petitioner's BadgerCare benefits, nor has it established that it has provided proper notice to the petitioner regarding said termination. The petitioner remains eligible for BadgerCare, in accordance with the notice requirements codified at *BadgerCare Plus Eligibility Handbook* § 29.1.

THEREFORE, it is

ORDERED

That this matter is remanded to the respondent to reinstate petitioner's BadgerCare benefits effective May 1, 2013, following payment of the required \$80.00 premium for each month of coverage requested by petitioner. **Petitioner shall pay said premium(s) within 20 days following issuance of this decision (by November 6, 2013).** Within 10 days following receipt of petitioner's premium payment(s), Respondent shall reinstate petitioner's BadgerCare coverage for those months for which the premium(s) has (have) been paid.

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.

¹ Only two exhibits were entered at hearing. Exhibit 1 was the Request for Fair Hearing, and Exhibit 2 was a 3 paragraph narrative "Appeal Summary." The agency presented no documentation of any notices provided to the petitioner, nor any documentation establishing the insurance offered by petitioner's employer. Fair hearings are somewhat informal, but they are adversarial proceedings. While the agency's representatives are not lawyers, they are expected to have some knowledge of what is required to prove a case.

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 17th day of October, 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 October 17, 2013.

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