



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/151218

PRELIMINARY RECITALS

Pursuant to a petition filed August 6, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Shawano County Department of Social Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on September 25, 2013, by telephone.

The issue for determination is whether the Department correctly discontinued the petitioner's adult BCP effective June 1, 2013.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Debra Marohl, ES Lead Worker
Shawano County Department of Social Services
607 E. Elizabeth Street
Shawano, WI 54166-3105

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Shawano County.
2. The petitioner has a household of four persons (self, spouse, 2 minor children), and was certified for BCP prior to June 2013. The petitioner's case was due for a review in May 2013.

3. On April 9, 2013, the petitioner began the review process by filling out, but not signing, the review questionnaire. *See*, Exhibit 1. On May 23, 2013, a notice was issued to the petitioner advising that her BCP would end June 1, 2013, due to an incomplete review, but says nothing about a premium. A review page bearing her signature was submitted to the Department on May 31, 2013. *See*, Exhibit 3. The petitioner also timely submitted verification of her self-employment income.
4. On June 13, 2013, the Department issued a written verification request to the petitioner for recent wage information for her husband's employment at Parsons Chevrolet. The deadline for return of the verification was Monday, June 24, 2013. That notice also advised the petitioner to pay a BCP premium for the two adults by June 24, 2013. *See*, Exhibit 2.
5. On June 25, 2013, the Department issued written notice to the petitioner advising that the household was ineligible for BCP from June 1, 2013, forward. The basis for closure was failure to verify the husband's income. *See* Exhibit 4.
6. An earnings verification form showing full-time employment was filled out by the husband's employer on June 26, 2013, and was filed with the Department on July 1, 2013.
7. On July 23, 2013, the Department issued a Positive Notice to the petitioner, advising that BCP was open for the household's two children from June 1, 2013 through May 31, 2014. On the same date, the Department issued a manual Negative Notice to the petitioner, advising that BCP would remain closed for the adults. The reason for closure stated in the notice was failure to supply timely income verification, and the imposition of a 12-month restrictive re-enrollment period *due to the verification failure*. *See*, Exhibits 6,7.
8. The household has income above 133% of the federal poverty level, which is currently \$2,610.13 gross monthly for four persons.

DISCUSSION

To qualify for BCP, a person must meet both non-financial and financial requirements. Wis. Stat. §49.471(4). At the annual review, the agency must request income verification. *BCP Eligibility Handbook, (BCPEH)*, §§9.1 & 9.9, available at <http://www.emhandbooks.wisconsin.gov/bcplus/>. The agency must give the client at least 10 days to supply requested verification. *Id.*, 9.4. The responsibility for supplying verification then rests on the recipient. However, if the client promptly advises the agency that she cannot obtain the verification, the responsibility for obtaining verification shifts to the agency. In this case, the petitioner did not supply her husband's earned income verification. Thus, the agency's discontinuance of the BCP case effective June 1, 2013, was proper.

However, the petitioner did submit the requested verification on July 1, 2013. The agency treated this as a new application and reopened benefits for the children. The agency continued to deny BCP for the adults on a restrictive re-enrollment theory. I am confused by this theory. The *BCPEH* authorizes restrictive re-enrollment for a person who has missed a premium payment, not for a verification failure. *BCPEH*, § 19.11.

The BadgerCare Plus statute allows a 12-month restrictive re-enrollment period for adults who fail to make a premium payment:

(10) COST SHARING.

(a) Copayments. ...

(b) Premiums.

...

1m. Except as provided in subd. 4., a recipient who is an adult parent or adult caretaker relative; who is not disabled, pregnant, or American Indian; and whose family income

exceeds 133 percent of the federal poverty line shall pay a premium for coverage under BadgerCare Plus in an amount determined by the department that is based on a formula ...

5. If a recipient who is required to pay a premium under this paragraph or under sub. (2m) either does not pay a premium when due or requests that his or her coverage under this section be terminated, the recipient's coverage terminates. If the recipient is an adult, the recipient is not eligible for BadgerCare Plus for 12 consecutive calendar months following the date on which the recipient's coverage terminated, except for any month during that 12-month period when the recipient's family income does not exceed 133 percent of the poverty line. If the recipient is a child, the recipient is not eligible for BadgerCare Plus for 3 consecutive calendar months, or up to 12 consecutive calendar months if the federal department of health and human services approves, following the date on which the recipient's coverage terminated, except for any month during that period when the recipient's family income does not exceed 150 percent of the poverty line. This period of ineligibility for a child does not apply to any child who has paid the outstanding premiums.

Wis. Stat. § 49.471(10). Although a different section of the BCP statute demands that income be verified as a condition of eligibility (which makes the June 1, 2013 closure a correct action), it does not create authority to impose a restrictive re-enrollment period for lack of income verification. *Id.*, § (6)(g)1.

In this case, the petitioner did not “quit” BCP, as she never intended to leave the program. The petitioner was understandably confused about her premium payment status during the protracted timeframe in which income verification was requested and received. *E.g.*, the May 23, 2013 BCP discontinuance notice (for incomplete review) says nothing about paying a premium. The June 13 verification request told her to pay a premium in 10 days. The June 25 discontinuance notice said nothing about premium payment. A July 24, 2013 notice (sent after the petitioner had submitted all needed income verification) said nothing about premium payment. Rather, the reason given for the petitioner and her husband not being enrolled was declared to be “the person who applied said that you do not want this benefit.” Exhibit 9. Also, the petitioner telephoned the member services number on the back of her BCP card in June to obtain clarification as to her premium payment liability; she was advised that she could pay as late as July 31 to remain eligible. The petitioner telephoned a Consortium worker (not Ms. Marohl) on July 9 to inquire as to the status of her case, and she was told that the Department was still reviewing her case in light of the July 1 verification submission (he did not say that the adult case was closed or that a restrictive re-enrollment was in place).

So, to sort this all out: there is no basis for imposing a restrictive re-enrollment period here. Verification failure is a reason to close a case, but not a reason for restrictive re-enrollment. The petitioner’s failure to pay premiums from June forward was understandable given the confusion surrounding the status of her review. The petitioner effectively made a new request for adult BCP on July 1, and the agency should have reopened her BCP effective July 1, 2013. I will direct the agency to do so here, although the petitioner may have to pay a premium arrearage for eligibility to begin.

Other Information

Also, because the petitioner’s household income exceeds 100% of the FPL, she should expect that the household’s adults will lose their BCP coverage at some point in 2014. When that occurs, the adults may wish to seek subsidized health insurance via “Obamacare.” Enrollment can be accomplished via the federal website, <https://www.healthcare.gov> or through the federal call center at 1-██████████. When applying, the program will want to know the petitioner’s tax household’s adjusted gross income for the last tax filing year. If things are working properly, the program should be able to see/verify the household’s adjusted gross income for the prior year via a federal “data hub.” That income information will be used to assign a percentage of poverty level to the household, which in turn is used to calculate the

amount of the premium subsidy that will be provided. A household at 101% of the federal poverty level (FPL), and which picks a “silver” insurance plan, will pay no more than 2% of gross income for its premium, as the rest will be covered by the subsidy. The subsidy percentage tapers off as income rises. A household at 399% FPL, which picks a “silver” plan, will pay no more than 9.5% of its income for its premium. I believe that 400% FPL for a household of four persons is \$92,200.

When shopping for insurance via phone or website, the buyer will have a choice of plans labeled with various “metal” colors. Each color represents a different level of shared responsibility between the insurer and the insured for medical bills incurred. The breakdown is: Platinum-90% insurer/10% patient, Gold-80% insurer/20% patient, Silver-70/30, and Bronze-60/40. The idea behind this stratification is to allow the consumer to see “apples-to-apples” insurance comparisons. The patient’s premium cost for a Platinum or Gold plan will be more than the percentages stated in the prior paragraph for a Silver plan.

The various insurance plans may also have varying co-payments and deductibles. If a household’s income is below 250% FPL (about \$59,000 for a family of four), there will also be a subsidy to help pay co-payments and deductibles. This subsidy is called a “cost sharing reduction” or CSR.

As best as I can tell from the insurance commissioner’s website, the following insurers will be available in parts (in some cases, all) of Wisconsin: Common Ground Healthcare Cooperative, CompCare Health Services Insurance Corporation, Dean Health Plan Inc., Group Health Cooperative of South Central Wisconsin, Gundersen Health Plan Inc., Health Tradition Health Plan, Medica Health Plans of Wisconsin, MercyCare HMO Inc., Molina Healthcare of Wisconsin Inc., Physicians Plus Insurance Corporation, Security Health Plan of Wisconsin Inc., Unity Health Plans Insurance Corp., and Arise (WPS).

CONCLUSIONS OF LAW

1. The Department correctly discontinued the petitioner’s adult BCP coverage effective June 1, 2013, for failure to verify income.
2. The Department incorrectly imposed a restrictive re-enrollment on the adults in the petitioner’s BCP case, effective June 1, 2013.

THEREFORE, it is

ORDERED

That the petition is *remanded* to the Department with instructions to reopen the petitioner’s adult household member BCP effective July 1, 2013, after (1) advising the petitioner within **10** days of the date of this Decision of any premium liability (including possible arrearage) and to whom payment must be made, and (2) allowing the petitioner to make such premium payment within **20** days of the date of this Decision, and (3) certifying the adults as eligible from July 1, 2013 forward, if timely premium payments are made, within **30** days of the date of this Decision. In all other respects, 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 Madison,
Wisconsin, this 22nd day of October, 2013

\sNancy J. Gagnon
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 22, 2013.

Shawano County Department of Social Services
Division of Health Care Access and Accountability