



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/151253

PRELIMINARY RECITALS

Pursuant to a petition filed August 12, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on September 04, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent correctly determined that petitioner's household has access to 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: Pang Thao-Xiong
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner lives with her husband and two children.
3. The petitioner's total monthly household income is \$3,194.30 per month. Exhibit 2. This amount exceeds 133% of the federal poverty level.

4. The petitioner's husband is offered health insurance subsidized by his employer. His employer pays 80% of the premium, and his premium for employee-only coverage is \$37.00. Exhibit 7.
5. Petitioner's employer's health plan offers coverage for employee's spouse. Exhibit 7.

DISCUSSION

To be eligible for BCP, a person must be under age 19, a custodial parent, or the spouse of a custodial parent. Wis. Admin. Code, §DHS 103.03(1)(f)1. Effective July 1, 2012, the Department implemented new provisions concerning BCP eligibility for families with access to employer sponsored insurance. BCP Handbook, §7.3.1. Under the new policy, if an employer provides health insurance, members of the household are ineligible for BC+ under certain circumstances. BCP Handbook, §7.3.3. The new policy provides:

Beginning July 1, 2012, there are two Current Access policies in effect:

- The 80% Current Access Test.
- The 9.5% Current Access Test.

The 9.5% Current Access Test will be applied on or after July 1, 2012, but only to adult parents and caretakers and only when:

- A new application  or program request is submitted,
- New employment is reported,
- The next review/renewal is completed, or
- A parent or caretaker with employment is added to the assistance group.

I. ACCESS-80% PREMIUM

Access is currently measured in two ways, either of which is disqualifying. First, the statute declares that a family has "access" to other health insurance if the employer is paying at least 80 percent of the premium:

(8) HEALTH INSURANCE COVERAGE AND ELIGIBILITY. ...

b) Except as provided in pars. (c) and (d), an individual ... is not eligible for BadgerCare Plus if any of the following applies:

1. The individual has individual or family health insurance coverage that is any of the following:
 - a. ***Coverage provided by an employer and for which the employer pays at least 80 percent of the premium.***
2. The individual, in the 12 months before applying, had access to the health insurance coverage specified in subd. 1. ...

Wis. Stat. §49.471(8) (*emphasis added*). The parallel state code provision and policy handbook section echo the statute on this issue. Wis. Admin. Code §DHS 103.03(1)(f)3; BCP Handbook, §7.3.

Petitioner's employer verified that it pays at least 80% of the health insurance premium. The respondent's June 26, 2013, notice addressed petitioner's minor children, stating:

You are able to get health insurance from an employer who pays at least 80% of the premium. Children under 19 may be able to get [BadgerCare Plus] if your family meets a deductible. Call your local agency to ask for a BadgerCare Plus deductible.

Exhibit 6, and see BCP Handbook, §17.1. Electronic Case Comments indicated that petitioner requested that her minor children be enrolled in BadgerCare with a deductible; the respondent opened BadgerCare for petitioner's minor children subject to a deductible in the amount of \$1,503.30. See, Exhibit 2.

With regard to BadgerCare Plus eligibility for petitioner and her husband, the next test, below, is dispositive.

II. ACCESS – 9.5% INCOME TEST

The 9.5% income test is found in state policy as follows:

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.

BCP Handbook, §7.3.3. The above policy also applies to a person who could have enrolled in the employer plan in the past 12 months. This policy is in turn derived from the federal waiver amendment to BCP:

To enable the State to prevent substitution of public coverage for private coverage ...

- a) When the individual has, or had, access to employer-sponsored major medical health insurance (individual or family) in which the monthly premium that would be paid by the individual does not exceed 9.5 percent of household income (for self-only coverage) during the most recent open or special enrollment period within the previous 12 months, ...

Wisconsin BadgerCare § 1115 Waiver Authority, paragraph #1, at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Waivers.html> .

The petitioner concedes that her household income exceeds 130% of the federal poverty level, that her husband's employer offers insurance, and that the premium for her husband alone is less than 9.5% of their household income. The petitioner argues, however, that it is unfair to use this policy cost percentage

to determine her eligibility because the extremely high deductible prohibits the family from receiving any kind of medical care. I have read the entire eligibility section of the BadgerCare waiver document, and found that it consistently refers only to the monthly premium cost (no mention of deductibles, co-pays, or co-insurance) when applying the 9.5% income test to an adult applicant/recipient. Thus, I must conclude that the agency's action is consistent with the waiver requirements, and that discontinuance of adult coverage was correct here.

I have no authority to ascertain the wisdom or logic of the healthcare regulations; rather, I must apply them as they are written. Because the petitioner's wife can receive health insurance through her husband's employer and the amount he would pay for individual coverage is less than 9.5% of the household's total income, petitioner is ineligible for BadgerCare Plus. Because her husband's employer provides coverage to the petitioner, she is considered to have current access to coverage regardless of the cost of that additional coverage. This undoubtedly creates a hardship for her family, but I cannot consider this because the rules specifically state that there are no *good cause* reasons for not enrolling in a plan if she has current access to that plan. Therefore, I must uphold the agency's decision to end petitioner's BadgerCare Plus benefits.

CONCLUSIONS OF LAW

1. The Department correctly determined that petitioner's minor children would be eligible for enrollment in BadgerCare Plus subject to meeting a deductible.
2. The Department correctly discontinued BCP for the petitioner due to her ability to access other health insurance coverage.

THEREFORE, it is

ORDERED

That 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 1st day of November, 2013.

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 1, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability