



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/151256

PRELIMINARY RECITALS

Pursuant to a petition filed August 10, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Marathon County Department of Social Services in regard to Medical Assistance (MA)/BadgerCare Plus, a hearing was held on September 12, 2013, at Wausau, Wisconsin.

The issue for determination is whether the Department correctly discontinued the household's adult BCP, due to having past "access" to employer-based health insurance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Ms. Nu Vue, ES Spec.
Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Marathon County.
2. BadgerCare Plus (BCP) is a Wisconsin variant of MA for low-income pregnant women or families with minor children. The petitioner had an ongoing BCP case for an assistance group of four persons (three children). The case was due for a required annual review, which occurred

telephonically on June 21, 2013. On June 24, 2013, the Department issued a verification request for income and a review document signature. The Department also proceeded to review the petitioner's employer's filing regarding employee health insurance.

3. In early July, the Department observed that the state filing by the employer, [REDACTED] ([REDACTED]), declared that the petitioner had access to health insurance in which his portion of the payment would be under 9.5% of household gross income. The employer also declared that spousal coverage was available. As a result, the Department issued written notice to the petitioner on July 10, 2013, advising that BCP was being discontinued August 1, 2013, for the household's adults. The children remained eligible for BCP. *See*, Exhibit 3.
4. The petitioner's BCP household income exceeds 133% of the federal poverty level (it's at 139.58%), which means that the household adults are subject to the 9.5% health insurance availability test.
5. The petitioner's cost for [REDACTED]'s base health insurance plan, for the petitioner only, is \$53.01 bi-weekly. This cost is less than 9.5% of the household's gross income.

DISCUSSION

BadgerCare Plus is an expansion of the Wisconsin Medical Assistance program meant to provide insurance for children under 19 and their parents. *BadgerCare Plus Eligibility Handbook (BCPEH)*, 1.1. To be financially eligible for the BCP Standard Plan (full MA benefits), a family cannot have income greater than 200% of the federal poverty line (FPL). Wis. Stats. §49.471(8). The petitioner's household income does not exceed 200% FPL.

Additionally, there is a hybrid nonfinancial/financial BCP eligibility test related to access to other insurance. If a household's income exceeds 133% FPL, the household cannot be eligible for BCP if it has access to employer-based health insurance. *Id.*, §7.1. The current 133% of the poverty line figures may be viewed at *BCPEH* at §50.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

Wis. Stat. §49.471(8) states that a family is ineligible if it has, or has *access* to, employer-subsidized health care coverage. The Wisconsin Administrative Code §DHS 103.03(1)(f)2, and the *BCPEH*, 7.3, state that a family with income exceeding 133% of the FPL is ineligible if it is covered by and has "access" to any health insurance plan that meets the standard of the Health Insurance Portability and Accountability Act (HIPAA). A HIPAA plan is any group plan that provides medical care to individuals and/or their dependents. Wis. Stat. §49.471(1)(g).

The Department argues that adults have access to other health insurance if the premium cost does not exceed 9.5% of the household's gross income. That is the test that tripped up the petitioner here. The 9.5% income test is found in state policy as follows:

7.2.1.2 The 9.5% Past Access Test

Non-exempt parents and caretakers over age 18 with household incomes over 133% of the FPL who had access to health insurance, including access due to a qualifying event, in the twelve months prior to the application or review date, are not eligible for BC+ benefits if the access was through the current employer of an adult family member who is currently living in the household and,

- The individual could have enrolled in the employer’s plan under the current coverage period at any time in the past 12 months prior to the application or review date,
- The cost of coverage for an employee-only plan does not exceed 9.5% of the monthly household income, and
- There is no good cause reason for not signing up for the coverage.

When an employed parent or caretaker has been determined to have had past access, the individual’s spouse will also be considered to have past access if the employer offers a plan that would provide coverage to the spouse, such as employee + spouse or employee + family coverage.

...

Example 2: Joe and his wife, Mary, apply for BadgerCare Plus for themselves and their 3 children on July 2, 2012. Their income is 145% of the FPL. Joe works for ABC Company. ABC Company offers an employee-only plan as well as a family plan. Joe’s cost for the employee-only plan is less than 9.5% of the household’s countable income. The last open enrollment period to sign up for the employer sponsored insurance was October 1, 2011 through October 31, 2011. The plan coverage period is January 1, 2012 through December 31, 2012.

Since Joe could have enrolled in the past 12 months and could have had coverage under the current coverage period, and the premiums would have been less than 9.5% of the family’s income, he is ineligible. Since the employer offers a family plan that would cover Mary, she is also ineligible. Children under age 19 are not subject to the 9.5% access tests so the children’s eligibility is not affected.

BCPEH, §7.2.1. This policy is in turn derived from the federal waiver amendment to BCP, granted in April 2012, which says a person is not eligible if:

1. ...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, page 1, at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Waivers.html> .

The petitioner argues that it is unfair to use his single person/”self-only” policy cost percentage to determine eligibility for both himself and his spouse. That is because the cost percentage for them as a couple is higher than the 9.5% cost eligibility threshold. Nonetheless, the federal waiver language, requested by Wisconsin, directs the agency to look only at the percentage associated with the “self-only” coverage to determine if the petitioner’s husband is BCP eligible. His self-only percentage is under 9.5%, so he cannot be eligible for BCP at this time, due to access to the employer’s insurance. The cover letter (April 2012) to the above *Waiver Authority* applies this change to both parents.

This Decision is consistent with that written by another Administrative Law Judge in DHA case no. BCS/144854, issued on January 3, 2013.

A second point raised by the petitioner is that he pays for supplemental vision (\$6.92 biweekly) and dental (\$12.46 biweekly) insurance benefits through his employer, and that these amounts should be added to his premium cost in applying the 9.5% test. However, the *Waiver* language refers only to “major medical health insurance” premiums. Thus, the petitioner does not get credit for the cost of the vision and dental supplemental policies in this determination.

Finally, the petitioner mentioned that he contacted his employer in mid-August 2013 to enroll in the employer’s health plan. Unfortunately, the employer was dilatory and did not enroll the petitioner until September 1, 2013. The petitioner desires, at a minimum, BCP adult coverage for August 2013. However, the *Waiver* document lists only the following “good cause” exceptions for working around the BCP 9.5% access ineligibility determination:

[the person who had past access had good cause for not enrolling in the employer’s plan, due to:]

- i. Lost health insurance coverage due to loss of employment;
- ii. Lost health insurance coverage due to discontinuation of health benefits to all employees by the client’s employer; or

iii. Had one or more members of the individual’s family, during the open or special enrollment period, covered through:

A private health insurance policy; or

Medicaid, or CHIP, unless the eligible individual had a family income at or above 133 percent of the FPL.

Unfortunately, delay by the employer’s HR department is not among the enumerated reasons. Thus, I cannot provide the petitioner with any relief for August 2013.

CONCLUSIONS OF LAW

1. The Department correctly discontinued BCP for the petitioner and his spouse due to their ability to access other health insurance coverage, with the husband’s “self-only” coverage cost being under 9.5% of gross household income.

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 23rd 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 23, 2013.

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