



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/151267

PRELIMINARY RECITALS

Pursuant to a petition filed August 07, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a hearing was held on September 10, 2013, at La Crosse, Wisconsin.

The issue for determination is whether the respondent properly terminated petitioner's enrollment in BadgerCare Plus (BCP) and placed her in restrictive reenrollment due to her failure to pay a monthly premium.

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: Tom Miller

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of La Crosse County, and was enrolled in BCP as part of a 5-person household.

2. On March 21, 2013, petitioner was informed that, effective May 1, 2013, petitioner would be required to pay a monthly premium in the amount of \$114.00 in order to maintain her enrollment in BCP. Exhibit 2. That notice informed petitioner that if she did not pay the premium, her BCP benefits would end and she would not be able to enroll in BCP for a period of 12 months.
3. On May 29, 2013, petitioner received a notice indicating, in part, that petitioner had not paid her BCP premium. This notice indicated that her BCP enrollment would end as of July 1, 2013, and that if she wanted to remain enrolled she needed to pay the premium. It further informed the petitioner that if the premium was not paid by the end of June, she would not be able to enroll in BCP for a period of 12 months. Exhibit 2.
4. On August 7, 2013, petitioner timely appealed the termination of her BCP enrollment and her placement in restrictive reenrollment for a period of 12 months.

DISCUSSION

BC+ recipients must pay a monthly premium based upon income. If a recipient does not pay the monthly payment before the month after the end of the benefit month, the recipient may be ineligible for the program for twelve months. Wis. Admin. Code, §DHS 103.085(3); BC+ Eligibility Handbook, § 19.8.1. The penalty for missing the premium is called “restrictive re-enrollment.”

Generally payments after the first month are due by the 10th of the benefit month. Handbook; § 19.6. If a payment is missed, the agency will send a notice informing the client that benefits will end the first of the next month. If the person pays between the notice date and the first of the month, the case will not close. If the person pays after the first of the month, but before the end of that next month, the case can be reopened. See Handbook, § 19.9.

Good cause reasons for not paying a BC+ premium include circumstances beyond the person’s control such as agency errors in processing premiums, problems with electronic funds transfers, or even lost mail. “Insufficient funds” is not a good cause reason. Wis. Admin. Code, §DHS 103.085(3)(b); Handbook, § 19.8.3.

Once a person is in restrictive re-enrollment, the entire penalty period must be served unless household income drops below the level for which a premium is required. Handbook, § 19.11.2.

In this case petitioner did not pay her May premium in May or June. As of July 1, 2013, she no longer could pay the premium to get out of restrictive re-enrollment. Notices sent to petitioner repeatedly informed her of her obligation to pay the premium. The petitioner’s daughter testified to her mother’s lack of fluency in English, however she also testified that she and/or her siblings review mailings sent to her mother. I do not find that petitioner has established a good cause reason for failing to pay her BCP premium. The only way that petitioner can regain BC+ eligibility is if her income falls below the premium level.

The petitioner’s daughter has, in effect, argued that the program standard is unfair and that the administrative law judge should grant petitioner relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department’s assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. While I empathize with petitioner’s situation, I find no error on the part of the respondent, and I am unable to order any remedy based solely upon “fairness.”

CONCLUSIONS OF LAW

The respondent properly terminated petitioner's enrollment in BadgerCare Plus (BCP) and placed her in restrictive reenrollment due to her failure to pay a monthly premium.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 17th day of October, 2013

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting 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 October 17, 2013.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability