



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/151405

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 13, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on September 4, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly discontinued the petitioner’s BCP coverage for her child effective July 1, 2013.

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: Jose Silvestre, IM-Advanced  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

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

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Prior to July 2013, the petitioner was certified for BCP as a household of two persons (self and minor child). The petitioner’s case was due for an annual review in June 2013, and the petitioner filled out a review form on June 3, 2013. That form disclosed employment of the petitioner at

██████████ (██████████), so the agency issued an employment verification request regarding ██████████ on June 7.

3. The petitioner timely supplied the requested verification, which showed that the petitioner was working an average of 40 hours weekly at \$25.00 hourly. The resulting monthly gross income exceeded \$4,000. This level of income made the petitioner financially ineligible for BCP (\$2,585 limit for 2), but did not render her child *financially* ineligible, because different income limits apply to children and adults.
4. On June 17, 2013, the Department issued written notice to the petitioner advising that her adult BCP was ending July 1, 2013, due to excess income. That notice also advised the petitioner that her child's BCP was ending July 1, due to having access to other health insurance through the petitioner's employer (██████████).
5. The petitioner's employer offered a 30-day window from May 1, 2013, in which the petitioner could sign up for health insurance for herself and her son. She did not do so. The employer's plan pays 82% of the premium cost for a parent and child(ren). The next opportunity to enroll the child in the employer's insurance would be during open enrollment in November 2013, with coverage to begin effective January 1, 2013. *See*, Exhibits 2, 3.

### 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. There are two major BCP benefit plans. 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 BCP Benchmark Plan (limited services) is available to *children* in households with income above 200% of the poverty line, and to self-employed parents/caretakers. The petitioner's household income exceeds 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. Poverty line figures are found at *BCPEH*, §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, the federal waiver document for BCP, 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).

So, what is "access?" 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 whose family income exceeds [133] percent of the poverty line 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. ...*

(d)1. None of the following is ineligible for BadgerCare Plus by reason of having health insurance coverage or access to health insurance coverage:

- a. A pregnant woman.
- b. [a child under age one] ...

2. An individual under par. (b)2., ... is not ineligible if any of the following good cause reasons is the reason that the individual did not obtain the health insurance coverage under par. (b)1. to which they had access:

- a. The individual's employment ended.
- b. The individual's employer discontinued health insurance coverage for all employees.
- c. [A family member was] eligible for other health insurance coverage ... at the time the employee failed to enroll in the health insurance coverage under par. (b)1. and no member of the family was eligible for coverage under this section at that time.
- d. The individual's access to health insurance coverage has ended due to the death or change in marital status of the subscriber.
- e. Any other reason that the department determines is a good cause reason.

*(emphasis added)*

Wis. Stat. §49.471(8). The parallel state code provision and policy handbook section echo the statute on this issue. Wis. Admin. Code §DHS 103.03(1)(f)3; *BCPEH*, §7.1 and 7.2.

None of the facts in the Findings above are in dispute. The petitioner did not enroll her child in the employer's health insurance plan in May because she hoped to be able to enroll her child at the time she lost the child's BCP. Her theory apparently is that the loss of BCP at annual renewal should be treated as a "qualifying event" by the employer, and that the employer should have then allowed her child to be enrolled. The employer rejects that position and has advised the petitioner that her next enrollment opportunity will be in November 2013. I have no authority to direct the employer to change its position. In light of the employer's position, the petitioner wishes to have me re-open BCP for the child until December 31, 2013, after which the child can be covered by the petitioner's employer insurance, assuming an enrollment in November 2013. I have reviewed the good cause exceptions to not using "accessible" insurance, and this situation fits none of them. In addition to reviewing the state statute and the *BCPEH*, chapter 7, I reviewed the BadgerCare Plus federal waiver document. *See*, Waiver # 11-W-00125/5, at ch. IV-Eligibility. None of them helps the petitioner here.

Applying the statute and policy to the facts of this case, I must conclude that the agency acted correctly in discontinuing the petitioner's child's BCP certification in July 2013.

### CONCLUSIONS OF LAW

The Department correctly discontinued BCP for the petitioner and her child due to their 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 31st day of October, 2013

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\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 November 1, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability