



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/151957

PRELIMINARY RECITALS

Pursuant to a petition filed September 9, 2013, under Wis. Stat., §49.45(5)(a), to review a decision by the Manitowoc County Dept. of Human Services to discontinue Medical Assistance (MA), a hearing was held on October 17, 2013, by telephone.

The issue for determination is whether petitioner's appeal of a termination and later denial of BC+ for June, 2013 was filed timely.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Lori Garceau
Manitowoc County Dept. of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County.
2. Petitioner's family received BadgerCare Plus (BC+) MA until May 31, 2013. They had a review scheduled by the end of May, and they submitted the review on-line on May 20, 2013. By a notice dated May 17, 2013, the agency informed them that BC+ would end June 1 because the review was not complete.

3. The completion of the review was delayed due to problems obtaining verification of income. The verification was received in June, and the review processed on June 13, 2013.
4. By a notice dated June 14, 2013, BC+ was denied for the adults effective June 1, 2013 because the state showed that petitioner's wife had access to health insurance through her employer. This notice was the first indication to the household that insurance access could be a problem with BC+ eligibility. The notice stated that they could appeal if they disagreed with the decision, but the appeal had to be filed within 45 days, or by July 30, 2013.

DISCUSSION

To be eligible for BC+, 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. Eligibility for BC+ can be affected by employer-sponsored insurance availability. Admin. Code, §DHS 103.03(1)(f) 2-5. Effective July 1, 2012, the Department implemented new provisions concerning BC+ eligibility for families with access to insurance, with the new policy becoming effective at each current household's next review. BC+ Handbook, Appendix 7.31.

Under the new policy, if an employer provides health insurance, members of the household are ineligible for BC+ under certain circumstances. Handbook, App. 7.3.3. Children are eligible if the employer pays less than 80% of the premium. If the employer pays 80% of the premium, a child under age 1 is ineligible if household income is above 300% of poverty, a child ages 1-5 is ineligible if income is above 185% of poverty, and a child age 6 or older is ineligible if income is above 150% of poverty. Handbook, App. 7.1 and 7.3.

Adults are affected differently. An adult can be eligible if the percentage of the premium paid by the parent for *employee-only* insurance is more than 9.5% of monthly income. Handbook, App. 7.3.3.

When petitioner's review was processed on June 13, the state computer system showed that there was access to insurance that paid more than 80% of the premium. On June 14 a notice was sent to petitioner that denied BC+ to him and his wife because of insurance access. The notice admittedly was confusing because it also gave increased income as a reason for the denial. However, agency case notes show that on June 17 petitioner spoke with his worker, and she told him that insurance access was the reason that BC+ was failing for the parents. There then was contact in ensuing days regarding the insurance availability and the premiums petitioner's wife would have to pay.

It is possible that petitioner had a reasonable argument that the insurance was not actually available. The problem is that he did not file this appeal until September 9, 2013. An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a); Income Maintenance Manual, §3.3.2. Language concerning the right to appeal and the time limit is included on all department notices. An MA appeal must be made in writing; it cannot be made orally unless it is then reduced to writing. Wis. Admin. Code, §HA 3.05(2)(a). The date of filing is the date the written appeal is received by the agency or the postmark date, whichever is earlier. Admin. Code, §HA 3.05(3)(c). If an appeal is untimely the Division of Hearings and Appeals lacks jurisdiction to consider the petitioner's position on the merits.

Petitioner received a series of notices detailing household eligibility. On May 17, 2013 a notice told him that BC+ would end June 1 because a review was not completed. The due date for an appeal of that notice was 45 days after June 1, or July 17 as stated on page 4 of the notice. On June 14, 2013, a notice was sent informing petitioner that BC+ was denied for the adults for June; the appeal deadline shown on

page 4 was July 30. On June 27 a notice was sent denying BC+ for the adults for August, 2013; the appeal date for August was September 17.

In his appeal letter petitioner states that they received no notice, and I believe he was referring to receiving no notice prior to June 14. Had petitioner filed this appeal prior to July 30, 2013, he would have had reasonable arguments concerning notice for June, availability of insurance through the employer, and the amount of the premium for the employer's insurance. Because the appeal was filed untimely, I cannot reach those arguments, and I must dismiss the appeal.

CONCLUSIONS OF LAW

Petitioner's appeal of a denial of BC+ for the month of June, 2013 was filed untimely.

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 22nd day of October, 2013

\sBrian C. Schneider
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 October 22, 2013.

Manitowoc County Department of Human Services
Division of Health Care Access and Accountability