



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/151964

PRELIMINARY RECITALS

Pursuant to a petition filed September 9, 2013, under Wis. Stat., §49.45(5)(a), to review a decision by Milwaukee Enrollment Services to discontinue Medical Assistance (MA), a hearing was held on October 9, 2013, by telephone.

The issue for determination is whether petitioner's appeal is untimely.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Lashun Johnson
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner had a review in January, 2013. Following the review the agency determined that petitioner had access to health insurance through her employer in which the premium was less than 9.5% of petitioner's household income. By a notice dated January 14, 2013, the agency notified petitioner that BadgerCare Plus (BC+) MA for her would end effective February 1, 2013 because she had access to health insurance through her employer. Petitioner's daughter remained eligible for BC+.

3. Petitioner filed this appeal on September 9, 2013.

DISCUSSION

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.

The January 14 notice to petitioner informed her that if she disagreed with the decision to discontinue BC+ for her she had to do so by March 19, 2013. Her current appeal is well past that deadline.

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. 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. However, adults are affected differently. If income is more than 150% of poverty, adults are ineligible for BC+ regardless of the amount of the premium paid by the employer or the employee. If income is between 133% and 150% of poverty, an adult can be eligible only 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.

Petitioner testified that she cannot afford the employer's insurance. While the monthly premium would be just \$135 per month, she would have to meet a \$1,700 deductible before the insurance coverage would kick in. There is nothing in the BC+ law or policy creating an exception for high deductibles in employer-sponsored insurance. Even if petitioner had filed this appeal timely, I would not be able to find that she is eligible for BC+ because of the high cost of the employer's deductible.

CONCLUSIONS OF LAW

Petitioner's appeal of the discontinuance of BC+ for her due to health insurance availability was 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 14th day of October, 2013

\sBrian C. Schneider
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 14, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability