



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCC/151967

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 08, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance, a hearing was held on October 28, 2013, at Appleton, Wisconsin.

The issue for determination is whether the agency met its burden of establishing that petitioner has available employee sponsored health insurance.

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: Michelle Vang

Outagamie County Department of Human Services  
401 S. Elm Street  
Appleton, WI 54911-5985

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. Petitioner was a recipient of benefits under the BadgerCare Core Program.
3. [REDACTED] [REDACTED] works at [REDACTED] [REDACTED].

4. On August 19, the Department sent notice to petitioner informing petitioner that BCC would be terminated due to available health insurance through [REDACTED]'s employer.
5. Petitioner appealed.

### 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. If income is more than 150% of poverty, the person must pay a premium for BC+ eligibility, if the household does not have access to insurance. Wis. Admin. Code, §DHS 103.085(1)(b); BC+ Handbook, Appendix 7.3.3. If income is between 133% and 150% of poverty the person is eligible for BC+ even if he has access to health insurance, if premiums for the health insurance are more than 9.5% of household income. BC+ Handbook, Appendix 7.3.3; this policy became effective July 1, 2012. If income is above 150% of poverty and the household has access to insurance, any adults in the household are ineligible for BC+, but children can be eligible if a deductible is met. Handbook, App. 17.1.

The reason for the termination in this case was because the Department determined that petitioner's income exceeds 133% of the federal poverty level and because [REDACTED]'s employer offers insurance with a premium less than 9.5 percent of household income.

Petitioner claims that he is a seasonal employee and not eligible for any health benefits. Petitioner offered a letter from [REDACTED] at [REDACTED] which states that [REDACTED] is not eligible for employer health benefits. The letter is not sworn under oath and the writer did not appear for questioning at hearing. Both [REDACTED] and [REDACTED] testified that insurance is not available to them.

The agency representative testified that the computer database indicates that this employer offers health insurance. But, the agency representative agreed that the database would not specify whether seasonal workers are included in the group that has insurance available or whether seasonal workers do not.

Given the letter on employer letterhead, and the adamant statements denying such availability, I would need more from the Department in order for it to meet its burden to justify termination. The information presented by the agency which was gleaned only from computer data appears unclear on this record. The agency may wish to contact the employer directly and obtain documentation relating to the availability to this particular employee. Termination may well be justified if the employer confirms such insurance availability, but not on the present record.

### CONCLUSIONS OF LAW

The agency did not meet its burden to establish that health insurance is available through the employer.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the Department and its county agent with instructions to restore BC Core benefits retroactive to the date of termination, which was September 1, 2013. This action must be completed within 10 days.

### **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 12th day of November, 2013

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\sJohn P. Tedesco  
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 12, 2013.

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