



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/152087

PRELIMINARY RECITALS

Pursuant to a petition filed September 13, 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 21, 2013, at Appleton, Wisconsin.

The issue for determination is whether the respondent (1) properly placed petitioner into restrictive reenrollment, and (2) correctly calculated petitioner's household income.

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: Lisa Watkins

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

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. On February 11, 2013, the petitioner was informed that she and her husband would be required to pay a premium for BadgerCare Plus benefits commencing on March 1, 2013. BadgerCare Plus

- (BCP) is a Wisconsin variant of MA for low-income, non-elderly, non-disabled persons. Exhibit 3.
3. On May 13, 2013, the petitioner was notified of the requirement to complete an annual BCP review by June 30, 2013. Exhibit 4.
 4. On June 18, 2013, respondent notified petitioner that petitioner's BCP benefits would end effective July 1, 2013, due to failure to complete a renewal. Exhibit 5.
 5. On July 18, 2013, the petitioner received a Notice of Proof Needed, which requested employment verification information. Exhibit 6.
 6. At hearing, the petitioner indicated that her household income fluctuates greatly. Upon hearing this explanation, the Department representative agreed to review petitioner's income and average that over a three month period, and thereby re-determine the petitioner's household eligibility from July 1, 2013, forward.

DISCUSSION

BadgerCare Plus is an expansion of the Wisconsin Medical Assistance program meant to provide insurance for children under 19 and their parents. *BCP 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 FPL amounts are available at *BCPEH*, §50.1, and online at <http://www.emhandbooks.wi.gov/bcplus/>.

Some recipients must pay a monthly BCP premium based upon income. As a general rule, individuals who are assessed a premium for BCP eligibility must make the assessed premium payment in a timely fashion or eligibility may be discontinued. *BCPEH* § 19. In addition, an individual who owes a premium for the current month who leaves the BadgerCare program by not paying a premium may be subject to a restrictive re-enrollment period. This means the adult individual cannot re-enroll in BCP for twelve months from the date of termination. *BCPEH* § 19.8.

In a Fair Hearing concerning the propriety of a discontinuance or reduction of benefits, such as this, the county agency has the burden of proof to establish that the action taken by the county was proper. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the discontinuance action was required.

The Department conceded that a very confusing scenario developed here, where the petitioner was informed of a determination that a premium would be required, the petitioner questioned the premium, and was subsequently placed into a BCP extension due to decreased income, though she was also placed into restrictive re-enrollment. The record does not disclose if there was any notice of the restrictive reenrollment, nor were any notices regarding the unpaid premiums submitted into evidence.

In testimony at hearing, the respondent's representative suggested that restrictive reenrollment commenced due to the petitioner's failure to pay the premium due for March, 2013, but concedes that petitioner's BCP enrollment continued through June, 2013. She noted that the petitioner was informed that her enrollment was ending July 1, 2013, due to failure to complete her renewal. When questioned on this discrepancy, the respondent's representative said that it appeared that the petitioner failed to pay a premium, but her household income changed around the same time; this then caused her household to again qualify for BCP. No documentation of the premium due or notices of the failure to pay a premium are included in the record. Based upon the record before me, I cannot find that petitioner's enrollment in restrictive reenrollment was proper here.

At hearing the petitioner argued that her husband's income fluctuates greatly. The Department has agreed to re-determine the petitioner's BCP eligibility as of July 1, 2013, based upon an average income of at least three months. In order that the respondent may properly determine petitioner's average monthly household income, the petitioner shall provide the respondent with at least three months of income information commencing in July, 2013. This information shall be supplied to the respondent within 10 days following petitioner's receipt of respondent's request for the information. Upon receipt, the respondent shall promptly re-determine petitioner's income and eligibility to enroll in BCP as of July 1, 2013.

CONCLUSIONS OF LAW

1. The respondent has failed to establish that it correctly placed petitioner into restrictive reenrollment.
2. The respondent has agreed to re-determine the petitioner's BCP eligibility as of July 1, 2013, based upon an average income of at least three months.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to (1) request paystub/hours verification from the petitioner and her husband for the period of July, 2013, forward, within 10 days of this Decision, and (2) to re-determine the petitioner's BCP eligibility from July 1, 2013, forward, within 10 days following receipt of the verification from the petitioner.

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 26th day of November, 2013

\sPeter McCombs
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 November 26, 2013.

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