



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/152375

PRELIMINARY RECITALS

Pursuant to a petition filed September 24, 2013, under Wis. Stat., §49.45(5)(a), to review a decision by the Winnebago County Dept. of Human Services to discontinue Medical Assistance (MA), a hearing was held on November 19, 2013, by telephone.

The issue for determination is whether petitioner failed to pay her BadgerCare Plus (BC+) premium.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Leslie Vosters
Winnebago County Dept. of Human Services
P.O. Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner received BC+ for herself and three children. Effective April 1, 2013, the BC+ closed because of processing problems. The review then was completed, and on April 1 a premium notice was sent to petitioner's [REDACTED] [REDACTED] address telling her that she had to pay a \$142 BC+ premium for April by April 10. The notice did not state how the premium was calculated or that petitioner could appeal, and no other notices of the premium were sent. Petitioner did not pay the premium.

3. By a notice dated April 9, 2013, BC+ reopened for the children but was denied for petitioner because she failed to pay the BC+ premium.
4. On April 29, 2013, the agency sent petitioner a notice at her new [REDACTED] [REDACTED] [REDACTED] address telling her that she was eligible for BC+ effective June 1, 2013 with a \$142 premium. Petitioner did not pay the premium.
5. On June 18, 2013, the agency sent petitioner a notice informing her that her BC+ would close July 1, 2013 because she did not pay the premium.
6. Petitioner did not receive either the April 29 or the June 18 notice.
7. In July petitioner's address was changed to a [REDACTED] address erroneously. On July 8 the county sent petitioner a notice to that address telling her that she was in restrictive enrollment for 12 months.
8. Petitioner filed this appeal on September 24, 2013.

DISCUSSION

BC+ recipients must pay a monthly premium based upon income. If a recipient does not pay the monthly payment before the month after the end of the benefit month, the recipient may be ineligible for the program for twelve months. Wis. Admin. Code, §DHS 103.085(3); BC+ Handbook, Appendix 19.8.1. The penalty for missing the premium is called "restrictive re-enrollment."

Generally payments after the first month are due by the 10th of the benefit month. Handbook; App. 19.6. If a payment is missed, the agency will send a notice informing the client that benefits will end the first of the next month. If the person pays between the notice date and the first of the month, the case will not close. If the person pays after the first of the month, but before the end of that next month, the case can be reopened. See Handbook, App. 19.9.

Good cause reasons for not paying a BC+ premium include circumstances beyond the person's control such as agency errors in processing premiums, problems with electronic funds transfers, or even lost mail. "Insufficient funds" is not a good cause reason. Admin. Code, §DHS 103.085(3)(b); Handbook, App. 19.8.3.

Once a person is in restrictive re-enrollment, the entire penalty period must be served unless household income drops below the level for which a premium is required. Handbook, App. 19.11.2.

Petitioner testified that she received the April 1 notice telling her that she had a \$142 premium, but then when she went into the computer record it said that she did not owe a premium. She probably should have been suspicious when she received the April 9 notice saying that she was ineligible due to not paying a premium, and in fact petitioner did not receive BC+ in April and May.

Inexplicably petitioner was allowed back on BC+ in June. Again she did not pay the premium, and she testified that she did not receive the April 29 or the June 18 notice telling her that BC+ would close again July 1.

I have thought long and hard about this case. In the end I find that there was enough weird stuff going on that I believe it warrants a second look back to April 1. The first problem is the April premium. All that was sent was a payment request. No notice was sent informing petitioner of the premium or how it was calculated, but the notice denying eligibility was sent before the premium was due. All this is important because petitioner now says that her income was overstated; while she would still have a premium it likely would not be as high.

The second problem is the reopening of petitioner's BC+ in June. Why was she not put on restrictive re-enrollment after missing the April premium?

The third problem is that petitioner's mail apparently was being intercepted. Normally I am suspicious of claims about mail not being received, but in this case petitioner's address was changed to [REDACTED] without any input from her. Is it possible that the postal service also received a change of address and that petitioner's mail was not being delivered to the [REDACTED] address?

Finally, petitioner testified that she received a notice telling her to pay a premium but when she went on-line her case showed no premium being owed.

In the end I have decided that if I am wrong I would prefer to be wrong on the recipient's behalf. I believe there is enough of a chance that petitioner actually did not know about the premiums that to simply hold against her would be unjust.

The county will be ordered to re-determine petitioner's BC+ eligibility retroactive to April 1, 2013. The county should determine the correct premium using correct income, and petitioner will have to pay any premiums that will be determined. Petitioner can decide which months she wants coverage except that she will have to pay a premium for the month of June in which she already was covered. See the Handbook, Appendix 28.9 regarding restored benefits:

If it is determined that a member's benefits have been incorrectly denied or terminated, restore his/her BC+ from the date of the incorrect denial or termination through the time period that s/he would have remained eligible.

If the member was incorrectly denied or terminated for BC+ with a premium obligation, allow the member to pick which months s/he would like to receive benefits. Collect all premiums owed for those prior months before certifying the member for the months s/he chose.

If a member already paid for a BC+ covered service, inform the member that s/he will need to contact his/her provider to bill BC+ for services provided during that time. A BC+ provider must refund the amount that BC+ will reimburse for the service. The provider may choose to refund up to the full amount billed to the member, but that decision is entirely optional.

CONCLUSIONS OF LAW

The county should review petitioner's BC+ eligibility back to April 1, 2013 because of discrepancies in mailing and receipt of notices.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to re-determine petitioner's BC+ eligibility retroactive to April 1, 2013. The county should determine the correct premium using correct income, and petitioner will have to pay any premiums that will be determined. Petitioner can decide which months she wants coverage except that she will have to pay a premium for the month of June in which she already was covered. These actions shall be taken within 10 days of this decision.

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 29th day of November, 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 November 29, 2013.

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