



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/153159

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 29, 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 November 26, 2013, by telephone.

The issue for determination is whether petitioner's appeal of a BadgerCare Plus (BC+) discontinuance and restrictive re-enrollment was timely.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Pang Thao-Xiong  
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. She received BC+ for herself and her daughter until the county action.
2. In June, 2013, the agency updated petitioner's case to show that she was working two jobs. On June 11, 2013, the agency sent petitioner a notice telling her that she had to pay a \$65 BC+ premium beginning July 1, 2013. A premium coupon was sent soon after.

3. Petitioner did not pay the premium. By a notice dated July 19, 2013, the agency informed petitioner that BC+ for her would end August 1, 2013 because she did not pay the premium. Her daughter's coverage was unaffected. Another notice was sent on August 12, 2013 telling petitioner that she was ineligible because she did not pay the premium.
4. On August 19 petitioner had a conversation with an agency employee who told her she still could pay the July and August premiums by the end of August. Petitioner responded that she did not have the funds to pay them.
5. Petitioner filed this appeal on October 29, 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 was unaware of the premium. That would mean she did not receive the June 11 notice of the premium, the premium coupon that was mailed days later, or the July 19 notice telling her that BC+ was closing. However, petitioner did receive the August 12 notice. She contacted the agency on August 19 to ask why she was cut off. I asked her during the hearing why she called on August 19 and she responded that she received a notice saying that she was cut off. That exchange leads to the jurisdictional problem with petitioner's appeal.

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.

Even if I accept that petitioner did not receive the June and July notices due to problems with her mail, petitioner did receive the August 12 notice. That notice told petitioner on page 4 that if she disagreed with the action she could appeal by October 17, 2013. Petitioner filed this appeal on October 29, 2013. Thus even if I were to give petitioner the benefit of the doubt that she could appeal up to the date stated in the August 12 notice, her appeal still is untimely. I must conclude, therefore, that the restrictive re-enrollment should stay in effect.

**CONCLUSIONS OF LAW**

Petitioner's appeal of a BC+ discontinuance and placement into restrictive re-enrollment 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 4th day of December, 2013

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\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 December 4, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability