



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/153657

PRELIMINARY RECITALS

Pursuant to a petition filed November 20, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on December 19, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined petitioner's BadgerCare Plus-MA premium effective December 1, 2013.

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, Room 651
Madison, Wisconsin 53703

By: Pang Thao Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On November 5, 2013 petitioner had a renewal for FS. At that time the agency found she had earned income with two other employers than for which it previously had budgeted her income.

The agency calculated petitioner’s monthly income to be \$2186.88, or 169% of the Federal Poverty Level (FPL).

- 3. On November 11, 2013 the agency issued a notice of decision to petitioner stating that effective December 1, 2013 she would have to pay a monthly premium of \$98 in order to receive her MA.

DISCUSSION

BadgerCare Plus (BCP) is a Wisconsin variant of MA for families with minor children, and pregnant women. Wis. Stat. §49.471; *BCP Eligibility Handbook (BCPEH)*, § 1.1, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

Unless exempt, the following individuals must pay a premium to become or remain eligible for BC+:

- 1. Children in families with income over 200% of the Federal Poverty Level (FPL),
- 2. Parents, stepparents and caretaker relatives with income over 133% through 200% of the FPL,
- 3. Parents, stepparents and caretaker relatives with income over 133% in a BC+ Extension, and
- 4. Self-employed parents, stepparents and caretaker relatives with income above 200% of the FPL before subtracting the depreciation but below 200% of the FPL after subtracting the depreciation

BCPEH, §19.1.

Because petitioner’s income was over the 133% FPL she is required to pay a premium under this policy. The petitioner was unable to show how the county agency’s calculations were incorrect and I can find no errors. See also BadgerCare Plus budget at Exhibit 3.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Her arguments about the unfairness of the premium must be directed to the legislators who determine the policy.

CONCLUSIONS OF LAW

The agency correctly determined petitioner’s BadgerCare Plus-MA premium effective December 1, 2013.

THEREFORE, it is **ORDERED**

That the petition for review herein be 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, Room 651, 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 Milwaukee,
Wisconsin, this 7th day of January, 2014

\sKelly Cochrane
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 January 7, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability