



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCC/154334

PRELIMINARY RECITALS

Pursuant to a petition filed December 19, 2013, under Wis. Stat., §49.45(5)(a), to review a decision by Waushara County Human Services to discontinue Medical Assistance (MA), a hearing was held on February 18, 2014, by telephone.

The issue for determination is whether petitioner can reapply for BadgerCare Plus (BC+) Core Plan MA after her case closed.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Liz Johnson
Waushara County Human Services
213 W. Park Street
P.O. Box 1230
Wautoma, WI 54982-1230

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waushara County.
2. Petitioner received BC+ Core Plan MA. In October, 2013 the county worker discovered that petitioner was incarcerated with no certain end date. By a notice dated October 18, 2013, the county informed petitioner that the Core Plan would close November 1, 2013 because she was incarcerated.

3. Petitioner tried to call the county agency on Friday, November 29, 2013, but the office was closed due to the Thanksgiving weekend.
4. On December 13, 2013 petitioner contacted the county about reapplying for the Core Plan, but was told that no new applications were being taken.

DISCUSSION

The Wisconsin Administrative Code, §DHS 103.03(6) provides as follows:

A person detained by legal process is not eligible for MA benefits. For purposes of this subsection, "detained by legal process" means incarcerated because of law violation or alleged law violation, which includes misdemeanors, felonies, and delinquent acts. A person who returns to the court after observation, is found not guilty of a law violation by reason of mental deficiency and is subsequently committed to a mental institution shall not be considered detained by legal process.

That provision is echoed in the BC+ Handbook, Appendix 3.6. There is an exception for individuals released under Huber privileges to care for family members, but no others.

This is important for petitioner because the state agency stopped taking new application for the Core Plan, including application from persons whose cases were closed. Handbook, App. 43.10.

The county correctly closed petitioner's BC+ Core Plan when it discovered that she was incarcerated. Petitioner argues that she attempted to contact the agency to re-open the Core Plan within the 30 days after the case closed. It is not at all clear that she could do so. While there is a provision for reopening the Core Plan when it is closed for failure to verify information if the verification is provided within the next 30 days, there is no similar provision for reopening the Core Plan when it is closed for other reasons. See Handbook, App. 43.11.3 for the provisions concerning failures to verify.

Furthermore, even if petitioner could reopen the case within 30 days, she did not do so. Had she called back on Monday, December 2, it could be argued that she should be allowed to reapply because the 30 days ended on a weekend. However, mere evidence of an attempt to call on a day the agency was closed is not sufficient to find that petitioner attempted to reapply within the 30-day period.

Petitioner should note that she will be eligible for BC+ as of April 1, 2014, as long as her yearly income is less than \$11,800.

CONCLUSIONS OF LAW

1. The county correctly closed petitioner's BC+ Core Plan MA when she was incarcerated.
2. The county could not reopen the Core Plan after it was closed due to the state-wide enrollment cap.

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, 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 Madison,
Wisconsin, this 24th day of February, 2014

\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 February 24, 2014.

Waushara County Human Services
Division of Health Care Access and Accountability