



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCB/154644

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 7, 2014, under Wis. Stat., §49.45(5)(a), to review a decision by the Oneida County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on February 26, 2014, by telephone.

The issue for determination is whether there is jurisdiction to address a BadgerCare Plus (BC+) premium determination and subsequent BC+ termination.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Amy Mayo  
Oneida County Dept. of Social Services  
P.O. Box 400  
Rhinelander, WI 54501

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Oneida County.
2. Petitioner received BC+ for herself, her husband, and their two children. An annual renewal was completed in August, 2013. Self-employment income was calculated using 2012 tax returns. Following the review, a notice was issued on August 14, 2013, informing petitioner that the household was eligible for the BC+ Benchmark Plan with a monthly premium of \$235. The

- notice told petitioner that she could appeal the determination with a September 30 2013 deadline for the appeal.
3. Petitioner paid the premiums for August and September, 2013.
  4. Petitioner did not pay the October premium. By a notice dated October 18, 2013, the agency informed petitioner that BC+ would end November 1, 2013 because the premium was not paid. Benefits could continue if the premium was paid by the end of the next month. The notice told petitioner that she could appeal with a deadline of December 17, 2013.
  5. On November 6 a county worker told petitioner that she could remain eligible if she paid the missing premiums by the end of November.
  6. By a notice dated November 7, 2013, the agency informed petitioner that BC+ was denied and the children were ineligible for six month while the adults were ineligible for twelve months. The notice told petitioner that she could appeal with a December 23, 2013 deadline.
  7. Petitioner filed this appeal on January 7, 2014. She did not pay the missing premiums.

### DISCUSSION

Under BC+ rules the income limit for caretaker parents is 200% of the poverty level. BC+ Handbook, Appendix 16.1. That amount for a four-person household in 2013 was \$3,925. Handbook, App. 50.1. There is no limit for a child, but if household income is over 200% children are eligible for the BC+ Benchmark Plan with a premium. Handbook, App. 1.1.1. In addition, caretaker parents who are self-employed also can be eligible for the Benchmark Plan if income is over 200% of poverty. Id.

State MA law requires the agency to add depreciation back in when determining self-employment income. See Wis. Adm. Code, §DHS 103.07(2)(a). The agency should take net yearly earnings, add back in depreciation, and then divide by twelve. See also the self-employment worksheets found in the BC+ Handbook, App. 16.4.3.2.2. To be eligible for the Benchmark Plan the self-employed parents' income must drop below 200% if poverty if depreciation is excluded from the budget. Handbook, App. 19.2.

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.

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a). Language concerning the right to appeal and the time limit is included on all department

notices. If an appeal is untimely the Division of Hearings and Appeals lacks jurisdiction to consider the petitioner's position on the merits.

The county agency used the above-described process in this case. In August, 2013, the agency informed petitioner that the household was in the Benchmark Plan with a \$235 premium. In October the agency told petitioner that benefits would end November 1. On November 7 the agency again told petitioner that benefits were denied because the premium was not paid. All the notices included deadlines for appealing the action.

At the hearing petitioner disputed the calculation of the household income and the placement into the Benchmark Plan. Her appeal of those issues was untimely. In addition her appeal of the termination and placement into restrictive re-enrollment was untimely. I thus must dismiss the appeal and the remainder of the penalty period must be served. I do note that as of April 1, 2014, the process for counting self-employment income will change so that depreciation is not added back in. That change might result in income falling below 200% of poverty, so the restrictive re-enrollment period might end as of April 1. I encourage petitioner to seek a review of eligibility then. The same might be true when the 2013 self-employment tax returns are complete.

### **CONCLUSIONS OF LAW**

Petitioner's appeal of BC+ determinations affecting her family was untimely as to all determinations.

**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 28th day of February, 2014

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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 February 28, 2014.

Oneida County Department of Social Services  
Division of Health Care Access and Accountability