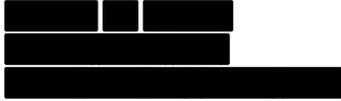




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

BCS/154715

PRELIMINARY RECITALS

Pursuant to a petition filed January 14, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Pierce County Department of Human Services in regard to Medical Assistance, a hearing was held on February 18, 2014, at Ellsworth, Wisconsin.

The issue for determination is whether the agency correctly seeks to restrict the petitioner's enrollment in the BadgerCare Plus program because she failed to pay a premium when it was due.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Rebecca Mueller

Pierce County Department of Human Services
412 West Kinne Street
PO Box 670
Ellsworth, WI 54011

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [redacted]) is a resident of Pierce County.
2. The county agency notified the petitioner on October 16, 2013, that beginning on November 1, 2013, she must pay a \$122 monthly premium for her BadgerCare Plus benefits.

3. The county agency notified the petitioner on November 18, 2013, that her BadgerCare Plus benefits would end on November 30, 2013, because she had not paid her premium.
4. The petitioner has not paid the \$122 monthly premium assessed on October 16, 2013.

DISCUSSION

The petitioner had been receiving medical assistance under BadgerCare Plus, which covers children under 19 and their parents. Wis. Stat. § 49.665. On October 16, 2013, the BadgerCare Plus agency notified her that as of November 1, 2013, she must pay a \$122 monthly premium. BadgerCare Plus rules require recipients to pay a premium by “the 10th of the month prior to the month for which the premium is required.” Wis. Admin. Code § DHS 103.085(1)(d)2. If a person fails to pay the premium by the end of the month for which it is required, benefits end on the last day of that month. Wis. Admin. Code § DHS 103.085(1)(d)3. When she did not pay it, the agency notified her on November 18, 2013, that her benefits would end on November 30, 2013. Those whose benefits end because they did not pay a premium cannot reenroll for 12 months (the period is six months for their children) unless they did not pay because of circumstances beyond their control and “all past due premiums have been paid in full.” Wis. Admin. Code, § DHS 103.085(3)(b)1; *BadgerCare Plus Handbook*, 19.11. Circumstances beyond the persons control include:

- a. A problem with an electronic funds transfer from a bank account to the BadgerCare program.
- b. A problem with an employer's wage withholding.
- c. An administrative error in processing the premium.
- d. Any other circumstance affecting payment of the premium which the department determines is beyond the group's control, but not including insufficient funds.

Wis. Admin. Code, § DHS 103.085(3)(b)1.

The petitioner does not dispute that she has not paid the premium but contends that it is too high because the agency incorrectly determined her income. Medical assistance recipients must appeal negative decisions within 45 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Admin. Code § HA 3.05(3). If an appeal is late, the Division of Hearings and Appeals loses its legal authority to consider it. The petitioner did not file any appeal in this action until January 14, 2014. Because this is more than 45 days after the decision concerning the amount of her premium took effect, the Division of Hearings has no jurisdiction to consider the petitioner’s challenge of the amount of her premium. This means that the only question that can be considered is whether she has paid her premium. She concedes that she has not. Nor does she assert that there are extenuating circumstances that prevented her from paying it. Therefore, I must uphold the agency’s decision to end her benefits.

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals lacks jurisdiction to consider whether the county agency correctly determined the petitioner’s BadgerCare Plus premium because she did not appeal that decision within 45 days.
2. The county agency correctly determined that the petitioner is ineligible for BadgerCare Plus because she failed to pay her premium when it was due.

THEREFORE, it is

ORDERED

The petitioner's appeal is 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

\sMichael D. O'Brien
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 February 24, 2014.

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